

Panaji, 20th March, 2025 (Phalguna 29, 1946)

**SERIES II No. 51**

# OFFICIAL GAZETTE GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

**GOVERNMENT OF GOA****Department of Co-operation**

Office of the Asstt. Registrar of Coop Societies

**Notification**

5-1960/2022/ARSZ/HSG/37

Date: 03-Apr-2024

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "Shree Krupa Co-operative Housing Maintenance Society Ltd., Zuarinagar, Sancoale, Goa" is registered under code symbol No.- RCSSZ2024250091.

Sd/-

(Monal Manerikar)

Asst. Registrar of Coop. Societies  
South Zone, Margao**CERTIFICATE OF REGISTRATION**

"Shree Krupa Co-operative Housing Maintenance Society Ltd, Zuarinagar, Sancoale, Goa" has been registered on 03/04/2024 and its bears registration Code symbol No. RCSSZ2024250091 and its classified as "Co-operative Housing Society" under sub-Classification "No.7-(d)-Co-operative Housing Maintenance Society" in terms of rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/-

(Monal Manerikar)

Asst. Registrar of Coop. Societies  
South Zone, Margao**Notification**

5-2033-2023/ARSZ/HSG/3946

Date: 05-Feb-2024

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, "The Viegas Residency Co-op. Housing Maintenance Society Limited Opposite Finolex Residency,



**Quelossim, Cortalim, Salcete Goa" - Goa is registered under code symbol No.- RCSSZ2023-240086.**

**Sd/-  
(SANTOSH P. NAIK)  
Asst. Registrar of Coop. Societies  
South Zone, Margao**

**CERTIFICATE OF REGISTRATION**

**"The Viegas Residency Co-op. Housing Maintenance Society Limited, Opposite Finolex Residency, Quelossim, Cortalim, Salcete Goa" - Goa has been registered on 05/02/2024 and its bears registration Code symbol No. RCSSZ2023-240086 and its classified as "Co-operative Housing Society" under sub-Classification "No.7-(d)-Co-operative Housing Maintenance Society" in terms of rule 8 of the Goa Co-operative Societies Rules, 2003.**

**Sd/-  
(SANTOSH P. NAIK)  
Asst. Registrar of Coop. Societies  
South Zone, Margao**



**Notification**

5-2050-2024/ARSZ/HSG/38

Date: 03-Apr-2024

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies Act, 2001, **"The Aqua Bay Co-operative Housing Maintenance Society Limited Near MES College Zuarinagar Sancoale Goa" is registered under code symbol No.- RCSSZ2024250092.**

**Sd/-  
(Monal Manerikar)  
Asst. Registrar of Coop. Societies  
South Zone, Margao**

**CERTIFICATE OF REGISTRATION**

**"The Aqua Bay Co-operative Housing Maintenance Society Limited, Near MES College Zuarinagar Sancoale Goa" has been registered on 03/04/2024 and its bears registration Code symbol No. RCSSZ2024250092 and its classified as "Co-operative Housing Society" under sub-Classification "No.7-(d)-Co-operative Housing Maintenance Society" in terms of rule 8 of the Goa Co-operative Societies Rules, 2003.**

**Sd/-  
(Monal Manerikar)  
Asst. Registrar of Coop. Societies  
South Zone, Margao**



**Empowerment of Persons with Disabilities**

**Notification**

1/78/2024-25-DEPwD/Admn/SAB/1074

Date: 11-Mar-2025

In exercise of the powers conferred by section 66 of the Rights of Persons with Disabilities Act, 2016, (Central Act No. 49 Of 2016), the Government of Goa hereby reconstitute the State Advisory Board on



Disability for the purpose of the said Act, consisting of the following persons/members, namely:

Sr. No	Name of State Advisory Board Member	Designation
1.	Minister for DEPwD	Chairperson
2.	Shri. Aleixo Reginaldo Lourenco, MLA	Member
3.	Shri. Ulhas Tuenkar, MLA	Member
4.	Shri. Sankalp Amonkar , MLA	Member
5.	Secretary (DEPwD)	Member, Ex-Officio
6.	Secretary (Finance)	Member, Ex-Officio
7.	Secretary (Education)	Member, Ex-Officio
8.	Secretary (Health)	Member, Ex-Officio
9.	Secretary (Transport)	Member, Ex-Officio
10.	Secretary (Law and Judiciary)	Member, Ex-Officio
11.	Secretary (Housing)	Member, Ex-Officio
12.	Secretary (Women and Child)	Member, Ex-Officio
13.	Secretary (Personnel)	Member, Ex-Officio
14.	Secretary (Rural Development)	Member, Ex-Officio
15.	Secretary (Panchayat)	Member, Ex-Officio
16.	Secretary (Industries)	Member, Ex-Officio
17.	Secretary (Labour and Employment)	Member, Ex-Officio
18.	Secretary (Urban Development)	Member, Ex-Officio
19.	Secretary (Science and Technology)	Member, Ex-Officio
20.	Secretary (Information and Technology)	Member, Ex-Officio
21.	Secretary (Public work Department)	Member, Ex-Officio
22.	Secretary (Sports and Youth Affairs)	Member, Ex-Officio
23.	Shri. Vishant Nagvekar (Disability Expert)	Member
24.	Shri. Prakash Kamat (Disability Expert)	Member
25.	Madhura Joshi (Disability Expert)	Member
26.	Percy Cardozo, Sangath - Goa (Disability Expert)	Member
27.	Shri. Prasad Joshi, Secretary, Goa Association for the Deaf (Disability Expert)	Member
28.	Shri. Deepak Prabhudesai, President National Association for the Blind Goa	Member
29.	Shri. Sagar Shetye, Chairman, Keshav Seva Sadhana, Bicholim	Member
30.	Shri. Chandarshekar Kelkar, Secretary, Aastha Anand Niketan, Mapusa	Member
31.	Dr. Gargi Sinha, Professor, Dnyanvardini Divyang College, Vasco Goa	Member
32.	Shri. Ranjan Naik, Manager, Gujarati Samaj Special School, Margao Goa.	Member



33.	Shri. Govind Kelkar, Secretary, Saksham Goa	Member
34.	Dr. Peter Castelino, Managing Trustee, Cause of Our Joy, Mapusa Goa	Member
35.	Shri. Sidharth Kuncalienker, Chairman, Sanjay School for Special Education, Research & Training, Alto Porvorim Goa	Member
36.	Dr. Nandita de Souza, Director, Sethu Goa	Member
37.	Shri. Savio Messias, Chairman, New Dawn Ashadeep, Vasco	Member
38.	Fr. Maverick Fernandes , Director, Caritas Goa	Member
39.	Fedrika Menezes, Miramar Panaji (Person with Disabilities)	Member
40.	Shri. Anup Priolkar, Chairman Lokvishwas Pratishthan, Ponda-Goa	Member
41.	Shri. Gauresh Parwar, (Scheduled Caste Representative) Bhansai Kakode Curchorem Goa	Member
42.	Shri. Vijay Gawas (Scheduled Tribes Representative) H. No. 431 Dev Bhat Neura-o-Pequeno Neura Tiswadi	Member
43.	Pallavi Arondekar, Director, Goa Chamber of Commerce and Industries	Member
44.	Tanvi Joshi Sawant, Director, CII'S Young Indian Chapter Goa	Member
45.	Anirudh Dempo, President, Goa Industries Association of Goa	Member
46.	Director of DEPwD	Member Secretary, Ex-Officio

Terms of reference:-

1. The tenure of the Board shall be for a period of 3 years from the date of publication of the Notification in the Official Gazette.
2. The Board shall meet at least once in every six months
3. Non official members shall be entitled for sitting allowance as per the entitlement or as fixed in the Goa Rights of Persons with Disabilities Rules, 2018.
4. No separate TA/DA will be paid.
5. Advisory Board shall function as per the Rights of Persons with Disabilities Act, 2016 and Goa Rights of Persons with Disabilities Rules, 2018.

This Notification shall come into force on the date of its publication in the Official Gazette.

By order and in the name of the Governor of Goa

Varsha Naik, Director of DEPwD, Ex-officio/Jt. Secretary (DEPwD)



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**Notification**

1/84/2024-25-DEPwD/ADMN/RESERVATION/1033

Date: 28-Feb-2025

In exercise of the powers conferred by Section 33 of the Rights of Persons with Disabilities Act 2016 (Central Act No. 49 of 2016), the Government of Goa hereby constitutes an Expert Committee for identification of the posts for Persons with Disabilities consisting of the following persons/members namely

- |   |                   |
|---|-------------------|
| 1. Secretary Department for Empowerment of Persons with Disabilities.   | -Chairperson      |
| 2. Joint Secretary Administrative Reforms Department  | -Member           |
| 3. Joint Secretary Personnel  | -Member           |
| 4. Joint Secretary Law  | -Member           |
| 5. Joint Secretary Education  | -Member           |
| 6. Joint Secretary Health   | -Member           |
| 7. State Commissioner for Persons with Disabilities   | -Member           |
| 8. Secretary State Commissioner for Persons with Disabilities   | -Member           |
| 9. Shri. Vishant Nagvekar, Disability Expert (Locomotor Disability)   | -Member           |
| 10. Shri. Gaurish Malgaonkar, Disability Expert (Hearing Impaired)  | -Member           |
| 11. Shri. Taha Haaziq, Disability Expert (Visually Impaired)  | -Member           |
| 12. Shri. Anup Priolkar, Chairperson, Lokvishwas Pratishthan, NGO working for Persons with Disabilities, Ponda-Goa. | -Member           |
| 13. Shri. Siddharth Kuncalienkar, Chairperson, Sanjay Centre for Special Education, Porvorim.                       | -Member           |
| 14. Director, Department for Empowerment of Persons with Disabilities.  | -Member Secretary |

**Terms for Reference**

1. The tenure of the Committee shall be for a period of 3 years from the date of publication of the Notification in the Official Gazette.
2. The Committee shall meet at least once in every six months.
3. The Committee may Co-opt any other member.
4. Non official members shall be entitled for sitting allowance as per the entitlement.
5. The Committee will submit its reports within a period of 6 months.

This Notification shall come into force on the date of its publication in the Official Gazette.

By Order and in the name of the Governor of Goa

*Varsha Naik*, Director Department for Empowerment of Persons with Disabilities.



**Department of Finance**

Office of the Commissioner of State Tax

**Notification**

CCT/12-4/Rev.No.1/2024-25/5408

Date: 18-Mar-2025

**Sub: Delegation of powers conferred upon the Commissioner under Section 39 of The Goa Value Added Tax Act, 2005 (Goa Act No. 9 of 2005).**

**(Under sub-sections (3) and (4) of Section 13 of the Goa Value Added Tax Act, 2005)**

In exercise of the powers conferred under sub-sections (3) and (4) of Section 13 of the Goa Value Added Tax Act, 2005 (Goa Act no. 9 of 2005) {hereafter referred as 'said Act'}, I, the undersigned Commissioner of State Tax, do hereby delegate the below mentioned powers to the Officer given below in respect of the particular case/matter shown against the name of the Officer as under.

Sr. No.	Officer to whom power is delegated	Details of power delegated	Powers delegated in particular matter of
1	Additional Commissioner of State Tax (Enforcement – North)	Powers of Revision u/s. 39 of said Act	Re-assessment Order no. 30500303185 / 328 dated 24/08/2023 passed by STO Pernem Ward under Section 31 of the Goa Value Added Tax Act, 2005 for the year 2018-19 in respect of dealer M/s. Maria Augusta Dsouza having VAT TIN 30500303185.

The Officer shall exercise delegated power strictly in accordance with legal provisions of the Goa Value Added Tax Act, 2005.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Tax, Goa  
Panaji, 18th March, 2025.

**Department of Labour****Notification**

28/02/2025-LAB/157

Date: 28-Feb-2025

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 17/02/2025 in Appln.01/2022 is hereby published as required under section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By Order and in the name of the Governor of Goa.  
Amalia O. F. Pinto, Under Secretary (Labour)

**IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT  
GOVERNMENT OF GOA AT PANAJI**

(BEFORE MRS. VIJAYALAXMI SHIVOLKAR, HON'BLE PRESIDING OFFICER)

**Appln.01/2022**



Mrs. Francisca Vas,  
H. No. 302(2), Modlowado,  
Assonora, Bardez-Goa (403503) ... Applicant/Party I

V/s

M/s. Herald Publication Pvt. Ltd.,  
A Wing, AF-1/4, 1<sup>st</sup> Floor,  
Campal Trade Center,  
Panaji –Goa (403001) ... Opponent/Party II

Workmen/Party I represented by Learned Advocate Shri P. J. Kamat.

Opponent/Party II represented by Learned Adv. Shri Shivraj Gaonkar.

### **AWARD**

**(Delivered on this the 17<sup>th</sup> Day of the Month of February of the Year 2025)**

The Applicant/Party I has filed this Application under Section 2A(2) seeking for adjudication of the existing dispute between the Management of Herald Publications Pvt. Ltd. and the Applicant/Party I in the matter of termination of the services of the Applicant herein above.

2. The Applicant states that she is a non-Journalist newspaper employee working for M/s Herald Publications Pvt. Ltd and she had joined the Company on 17/06/1996 as Steno Typist and was confirmed in the services w.e.f 17/03/1997. The Applicant states that she continued to work in the said post of Steno Typist till 21/03/2020 on which date she was instructed orally not to report for work from 23/03/2020 due to spread of Covid-19 Virus, by Mr. Mashelkar, Accounts Manager. On account of declaration of lockdown by the Govt. of India as well as the Govt. of Goa due to spread of Covid-19 virus, and as instructed by the company's Accounts Manager she could not report for work from 23/03/2020 to about first fortnight of April 2020. In the meantime she contacted her Reporting Manager, Mr. Mashelkar on phone, there were no clear instructions to her to report for work. However, she was informed that due to spread of Covid-19 Virus there is less work and she would be informed as to when she should report for work.

3. The Applicant states that in April, 2020 when she called Mr. Mashelkar, she was instructed to report for work and she accordingly reported for work in the second fortnight of April, 2020 and worked for 3 days. The Applicant was then instructed by Mr. Mashelkar – Accounts Manager not to report for work till written instructions were received from the Company. However, nothing was given to her in writing by Mr. Mashelkar. She was paid salary for the month of March, 2020 and 3 days salary of the month of April, 2020 by crediting the amount to her Bank Account. She then kept on calling Mr. Mashelkar – Accounts Manager and on every occasion she was instructed not to report for work. This went on till Feb 2021. To her knowledge all other workers were working normally and the paper was also published regularly during the said period.

4. The Applicant states that on 05.03.2021, she again called Mr. Mashelkar, Accounts Manager and asked him as to when she should report for work to which Mr. Mashelkar told her that there are no instructions from the Company and as such she should not report for work. The Applicant then personally approached Mr. Mashelkar- Accounts Manager on 15/03/2021 but she was again told by Mr. Mashelkar that there are on



instructions to allow her to report for work. She again went on 22/03/2021 to Mr. Mashelkar and told Mr. Mashelkar that she has come to report for work as he is refusing her to report for work for no reason. She was orally refused employment w.e.f 22/03/2021. The action of refusing her to report for work is illegal and in total contravention of the provision of the Industrial Disputes Act, 1947 and Rules thereunder and the law of the land.

5. The Applicant states that she had put in 24 years of continuous unblemished and meritorious service. The Applicant was even awarded Merit Certificate in 1998, increment in 2008 for relentless efforts in past years to take the newspaper to new heights, appreciation increment in 2010 for commitment and enthusiasm shown. The Applicant states that the action of the Opponent in refusing employment to her is illegal and unjust and the Applicant is entitled to the relief of reinstatement in service with full back wages, continuity in service and consequential benefits. The Applicant states that on 03/04/2021 the Party I/Applicant gave a notice to the Party II by Registered A/D post intimating that the termination of the Applicant/Party I is illegal and unjustified and demanded that she be reinstated in services with full back wages, continuity in service and all other consequential benefits within 7 days of the receipt of the said demands.

6. The Applicant states that the Opponent/Party II did not consider her demands and as such she approached the Labour Commissioner and Conciliation Officer, Govt. of Goa, Panaji for intervention in the dispute vide her letter dated 26/04/2021. That the first hearing of the matter was fixed on 16/07/2021 before the Asst. Labour Commissioner & Conciliation Officer, Panaji. However, the Opponent/Party II did not appear for discussion on that date and the matter was fixed on 16/08/2021 and adjourned from time to time.

7. The Applicant/Party I states that on 31/08/2021 the Opponent/Party II filed its reply dated 31/08/2021 refuting the allegation of the Applicant/Party I and stated that the Applicant/Party I is free to join her services on the same designation and discharge her duties once the Covid situation is under control in the health interest of all employees. That pursuant to the reply dated 31/08/2021 filed before the ALC & Conciliation Officer, Panaji, the Applicant/Party I approached the Party II to join her duties on 07/09/2021. The Applicant/Party I states that the security on duty did not allow the Applicant/Party I to enter the Office stating that he had no instructions to allow the Applicant/Party I to enter the Office. The Applicant/Party I also tried to contact the concerned officer but he was not available.

8. The Applicant states that she then sent a letter dated 14/10/2021 to the Opponent/Party II to that effect and requested the Opponent/Party II to intimate the Applicant/Party I as to when she should report for duty as mentioned in the letter dated 31/08/2021. The Applicant/Party I states that the Assistant Labour Commissioner & Conciliation Officer, Panaji took up the matter on 16/07/2021 which is still pending in conciliation under Section 2A (2) of the Industrial Disputes Act, 1947 for adjudication of the dispute. Hence, this application

9. The Applicant/Party I stated that the action of the Opponent/Party II in terminating her services w.e.f. 22/03/2021 is illegal, unjust and malafide and in contravention of the law of the land.

10. In its Written Statement at Exhibit 5, the Opponent/Party II submitted that the present claim of Ms. Francisca Vaz is not an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947 and also under Section 2(A)(2) of the Industrial Disputes Act, 1947 and hence cannot be entertained by this Tribunal. The Opponent/Party II has neither discharged, 'dismissed' or otherwise terminated' the services of



the Applicant/Party I. That the Applicant/Party I has voluntarily abandoned her services and there is no overt action on the part of the Employer for the alleged refusal of employment. There were no employer-employee relationship between the Parties at the time of alleged date of refusal of employment. Therefore, the Application is not maintainable.

11. The Opponent/Party II submitted that after her last day of attending her duties in April, 2020 the Applicant/Party I never reported for work or has sent any communication or made any efforts to join her services back. For the first time after a lapse of one year, the Opponent/Party II received a letter dated 03/04/2021 from the Applicant/Party I alleging that she was refused employment w.e.f 22/03/2021. The contents of the said letter dated 03/04/2021 are denied as false. It is also submitted that the letter dated 03/04/2021 was also forwarded to the Labour Commissioner as a letter requesting intervention to take action. It is submitted that there was never any industrial dispute at this time or any time thereafter or before as the Applicant/Party I had never made any demand upon the Employer.

12. It is submitted that raising an industrial dispute without first making a demand upon the employer is not maintainable and cannot be considered or taken cognizance of. Thereafter the Applicant/Party I sent a follow up letter on 26/04/2021 to the Labour Commissioner but did not send it to the Employer. On 16/07/2021, the Labour Commissioner directed the Employer to attend discussion in relation to the matter of the Applicant/Party I and thereafter the Employer put in his appearance and filed reply dated 31/08/2021. In the said reply dated 31/08/2021 the Opponent/Employer has maintained that the Applicant/Party I had voluntarily abandoned her services. The Opponent/Employer also maintained that the Applicant/Party I would be free to join the service once COVID situation improves. This is because the Opponent/Employer had already over the last one year managed without the Applicant/Party I and had to consider the case for re-employment after examining the then prevailing covid situation.

13. The Opponent/Party II further submitted that the Applicant/Party I vide her reply dated 14/10/2021 at Exhibit 21 stated that she was willing to report for work and that she had reported to her workplace on 07/09/2021 but was not allowed/refused entry by the Security. It is submitted that the said letter dated 14/10/2021 had been sent only to gain mileage in the present matter. It is further submitted that since the Applicant/Party I had voluntarily abandoned her services, there was no question of any reinstatement. Mr. Ramakrishna Mashelkar was not the Reporting Manager of the Applicant/Party I and neither was her supervisor. The only person who could direct the Party I was her Supervisor, Mr. Lance Godinho. The Applicant/Party I has never contacted Mr. Lance Godinho or even the General Manager seeking to join back for the year before her letter dated 03/04/2021. Unfortunately, Mr. Ramakrishna Mashelkar expired on 09/08/2021. It is further submitted that not even an email was sent by the Applicant/Party I about her wanting to resume work. The Applicant/Party I was aware of all the email addresses of her Supervisor, Mr. Lance Godinho and also of the General Manager, but did not chose to contact them. During her employment, the company had allotted the email address [francisca@herald-go.com](mailto:francisca@herald-go.com) to the Applicant/Party I.

14. The Opponent/Party II submitted that the Applicant/Party I has made a false claim that she was not allowed to resume the duties. It is submitted that all the employees in the establishment joined the services and have been working post April, 2020. Only two (2) employees have left the services by resigning for personal reasons during the COVID pandemic namely Ms. Prema Gadekar- Graphic Designer & Mrs. Approva Gramopadhye- Feature Editor. It is submitted that the Applicant/Party I was also fully aware that the Opponent/Party II establishment was exempted from closure during the lockdown being declared as an



essential service. The Applicant/Party I was also fully aware that her Reporting Manager and her Supervisor was Mr. Lance Godinho and therefore it is not correct to say she was refused employment by Mr. Mashelkar. It is emphatically denied that Mr. Mashelkar informed the Applicant/Party I not to report for work until she was given instructions.

15. The Opponent/Party II states that the Party I was never physically or otherwise stopped from joining her services back as claimed by her. It is submitted that the Applicant/Party I did not join her services even after the lapse of one year and therefore her services are presumed to be voluntarily abandoned.

16. The Applicant/Party I thereafter filed her Rejoinder reiterating and denying all the contentions and averments made by the Opponent/Party II.

17. On completion of the pleadings the Issues were framed at Exhibit 8 by this Tribunal which reads as under:

### **ISSUES**

1. Whether the Applicant proves that she joined the Company on 17/06/1996 and continued to work in the said post of Steno-Typist till 21/03/2020, on which date she was instructed orally not to report for work from 23/03/2020 due to spread of Covid-19 by the Accounts Manager?
2. Whether the Applicant proves that the action of refusing of her to report for work is illegal and in total contravention of the provision of the Industrial Disputes Act, 1947?
3. Whether the Applicant proves that she is entitled to the relief of re-instatement in service with full back wages, continuity in service and consequential benefits?
4. Whether the Opponent proves that the present Claim of the Applicant is not an industrial dispute as defined u/s 2(k) of the Industrial Disputes Act, 1947 and hence this application cannot be entertained by the Tribunal?
5. Whether the Opponent proves that they have neither discharged/dismissed or terminated the services of the Applicant and she has voluntarily abandoned her services and there is no overt action on their part for the alleged refusal of employment?
6. Whether the Opponent proves that there was no Employer-Employee relationship between them and hence the present application is not maintainable?
7. Whether the Opponent proves that after the last date of attending the work/duties in April, 2020, the Applicant never reported for work nor sent any communication nor made any efforts to join her services back and as such her services are presumed to be voluntarily abandoned?
8. Whether the Opponent proves that the Applicant was fully aware that their establishment was exempted from closure during the lock down being declared as an essential service?
9. What Relief? What Order?



18. I have gone through the records i.e. the pleadings, the oral as well as documentary evidence adduced by both the Parties and considering the same my findings on the issues with reasons are as follows:

**Issue No.1 : In the Affirmative**

**Issue No. 2 & 3 : In the Affirmative**

**Issue No.4 & 6 : In the Negative**

**Issue No.5 & 7 : In the Negative**

**Issue No.8 : In the Affirmative**

**Issue No.9 : As per final Order**

### REASONS

19. **Issue No 1:** It is in the evidence of the Applicant/Party I that she had joined the Opponent/Party II on 17/06/1996 at Exhibit 13 produced on record by the Applicant which shows that the Applicant was employed with the Opponent as a Steno-Typist and was confirmed in the service w.e.f. 26.03.1997 as per Exhibit 14 which is the Confirmation Letter. She further stated that she worked upto 21.03.2020 on which date the Applicant was instructed orally by Mr. Mashelkar, Accounts Manager not to report for work from 23.03.2020 due to spread of Covid-19 virus.

20. In the Written Statement, the Opponent/Party II has admitted that on account of the spread of Covid-19 virus, Govt. of India and Govt. of Goa had declared lock down on 22.03.2023 and then the said lock down continued till first fortnight of April 2020 and thereafter it was continued as per the guidelines of the Govt. That the private and public transport also was under lock down which fact has also been admitted by the MW 1, the witness of the Opponent/Party II. The Opponent however has taken two fold defence firstly that the Applicant/Party I has voluntarily abandoned her services and secondly stating that in view of Clause-12 of the Opponent's letter, the Applicant/Party I is presumed to have been resigned from the services of Opponent/Party II on account of her continuous absence for a period of more than one week without written permission. Now whether the Party I was instructed orally not to report for work or otherwise shall be taken up for discussion while answering the issue No. 5, 7 and 8 herein after. However, it is a matter of record that on account of spread of Covid-19, Govt. of India and Govt. of Goa had declared lock down on 22.03.2023 due to spread of Covid-19 virus and then the said lock down continued till first fortnight of April, 2020 and thereafter it was continued as per the guidelines of the Govt. which fact has not been specifically denied by the Opponent/Party II, this issues therefore stands answered in the affirmative.

21. **Issue No 4 & 6:** The Party II has challenged the reference on the preliminary objections in their Written Statement dated 16.03.2022. wherein it is stated that Claim of the Applicant/Party I is not an industrial dispute as defined under section 2 (k) or section 2A(2) of the said Act. That there was no Employer-Employee relationship between the Parties at the time of the alleged date of refusal of employment. The Party II however through their witness Shri Micheal Pereira admitted and accepted that the Applicant/Party I joined the services of the Party II/Employer as a Steno Typist and that she was issued an Appointment Letter on 17/06/1996.



Further he stated that the services of the Applicant/Party I were confirmed vide letter dated 26/03/1997 and since then the Applicant/Party I was employed with the Opponent/Party II. The above admission by the witness of the Opponent/Party II does not require any further proof as regards to the objections taken by them about non-existence of the industrial dispute between the Parties or there being no Employer-Employee relationship between the Applicant/Party I and the Opponent/Party II. The evidence on record on behalf of the Party II is contrary to the objections raised by them in the Written Statement. The Opponent/Party II therefore has miserably failed to prove both these issues, the burden of which was on to them. Hence, the Issue No. 4 and 6 stands answered in the negative.

**22. Issue No. 5 and 7:** The evidence on record reveals that the Opponent/Party II through their witness Shri Micheal Pereira admitted and accepted that the Applicant/Party I joined the service of the Party II/Employer as a Steno Typist and she was issued an Appointment Letter on 17/06/1996. Further, it is stated that the services of the Applicant/Party I were confirmed vide letter dated 26/03/1997 and since then the Applicant/Party I was employed with the Opponent/Party II. However, it is the case of the Opponent/Party II as set out in the Written Statement that the Opponent/Party II has neither discharged, dismissed or otherwise terminated the services of the Applicant/Party I. That the Applicant/Party I has voluntarily abandoned her service and there is no overt action on the part of the Employer for the alleged refusal of employment. It is the contention of the Applicant/Party I that on account of Govt. of India and Govt. of Goa had declared lock down on 22.03.2020 due to spread of Covid-19 virus and then said lock down continued till first fortnight of April 2020 and thereafter it was continued as per the guidelines of the Govt. The above facts has been substantiated and supported by the witness of the Opponent/Party II, Mr. Micheal Pereira in the cross-examination and has admitted certain vital facts as regards the employees of the Opponent/Party II having not attended the duty regularly on account of SOPs issued by the Govt. of India and Govt. of Goa whereby initially the movement of the general public was restricted on account of pandemic situation and thereafter by virtue of addendum dated 23/03/2020 at Exhibit 30 some of the services listed therein in the said addendum were exempted from closure in North Goa district with immediate effect to 00.00 hours of 26/03/2020 (intervening midnight of 25/03/2020 and 26/03/2020 which addendum included the print and electronic media at Serial No. 13 same being exempted from closure and therefore was included in essential services. Thus, the Office of the Opponent/Party II who is the Employer of the Applicant/Party I was working even during the above mentioned pandemic period. This fact has been very well accepted and admitted by Mr. Michael Pereira in his cross-examination. His evidence which is reproduced herein below reads “that nobody had initialed the attendance Register Exh. 25 (colly) from 23.03.2020 to the end of the month as there was lock down during the said period”. The Opponent’s witness has admitted that after the issue of addendum at Exh. 30, the workers of the Opponent had attended work in phases namely 30%, 40%, 50% approx. from month to month. That they did not all come together because of social distancing. That the Opponent/Party II had not taken any action against the persons who were absent during this period after the issue of addendum at Exh.30. That the Opponent/Party II left it to the individual employees to return back to work during the Covid-19 period.

**23.** That the Opponent/Party II did not send any letter to any of the workers to attend work after the issue of Exh.30. The above evidence on record totally demolishes the contention of the Party II that the Party I has voluntarily abandoned her services. Secondly the contention of the Party II that all employees whose services were needed during the period of Covid-19 were called for work in the month of April, 2020 and the Applicant/Party I had attended for 3 days in the second half of the month is contrary to their contention that



the Applicant/Party I voluntarily abandoned her services. The Applicant/Party I has in clear terms pleaded that she having made several attempts to approach the Employer, however, every time she was given assurance that she would be called as and when her services would be required by the Opponent/Party II. Accordingly, the Opponent/Party II was called for work in the month of April, 2020 and she also attended her duty for 3 days in second half for 3 days.

24. It is for the first time that the Party II in their Written Statement has taken a stand that under clause 12 of the letter of appointment the Applicant/Party I had accepted that after confirmation if the Applicant/Party I remains absent without leave or without written permission for more than one week, the Opponent/Party II will presume that the Party I had resigned from the services. It has been clearly admitted by the Opponent/Party II that the Applicant/Party I was employed with them continuously from 1996 till 21/03/2020. On 26/03/2020 as per the addendum at Exhibit 30, the Party I was required to attend her duty, however, she did not attend her duty from 26/03/2020 till the second half of April, 2020. Therefore, the Opponent/Party II ought to have terminated her service applying clause 12 of letter of appointment, however, no such action was taken which shows that on account of the pandemic the Opponent/Party II called upon only those employees whose services were needed by them which facts has also been admitted by the witness of the Opponent/Party II, therefore, it is unfair on the part of the Opponent/Party II to invoke clause 12 when they have admitted that as per the addendum at Exhibit 30 the employees of the Opponent/Party II attended work in phases i.e. 30%, 40% and 50% approx. from month to month on account of social distancing.

25. The Applicant/Party I in her Claim Statement as well as in her Affidavit-in-Evidence clearly stated that she had always contacted Mr. Mashelkar on phone and there were no clear instructions to her to report for work during Covid-19. That the Applicant/Party I had reported for work in April, 2020 on the instructions of Mr. Mashelkar and had worked for 3 days; that the Applicant/Party I was paid for the said 3 days of April and was again instructed by Mr. Mashelkar not to report for work till written instructions were given by him. That Mr. Mashelkar was continuously contacted by the Applicant/Party I and was always instructed not to report for work which went on till February, 2021. Unfortunately Mr. Mashelkar to whom the Applicant/Party I said she was reporting to had expired in the year, 2021, therefore, no negative inference can be drawn against the Applicant/Party I for not examining said Mr. Mashelkar. The Management taking advantage of the above fact has made an unsuccessful attempt to say that the said Mr. Mashelkar was not immediate/Sanctioning Officer of the Applicant/Party I as the Applicant/Party I was required to report one Mr. Lance Goudino who was AGM (Advertising and Marketing Establishment). The above stand by the Opponent/Party II has fallen flat again in view of certain vital facts being admitted by witness of the Opponent/Party II by Mr. Micheal Pereira on the aspect as to who was the immediate/Sanctioning Officer of the Applicant/Party I and in support of her contention the Applicant/Party I produced her leave applications at Exh. 38 Colly in cross of Opponent's witness No.1 and as per the said leave applications, the leave of the Applicant/Party I was always approved by Mr. Mashelkar and also communicated the same to the Applicant/Party I, by email, by Mr. Mashelkar. On the other hand no evidence was produced by the Opponent/Party II nor examined said Mr. Lance Goudino in support of their statement that the Applicant/Party I was working under the supervision of Mr. Lance Goudino. Thus, the Opponent/Party II has failed to adduce any cogent evidence in respect of their defence about the Applicant voluntarily abandoning her services or that the Applicant not making any efforts to join her services, for the Opponent to believe and presumed that she has voluntarily abandoned her services. **The Division Bench of the High Court, Bombay in the matter of Gaurishelkar Vishwakarma V/s Eagle Spring Industries Pvt. Ltd & others 1988 I CLR 38** has held :



3. *The learned Counsel..... In fact, according to Respondent No. 1 Company, there was no termination of service. Their case is that the petitioner workman had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well settled that even in the case of abandonment of service, the employer has to give a notice to the workers calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that workmen had abandoned the service..... ”*

26. Admittedly, the Opponent/Party II had not sent any letter to the workmen to attend work after the issuing of addendum at Exh. 30, nor any time thereafter till the date of making the demand dated 03.04.2021 (Exh-17). The evidence on record reveals that the Applicant/Party I had approached the Party II several times to join the duty and the Opponent/Party II had stated that they will send the letter once situation normalizes. Thus, the evidence on record does not in any manner support the stand taken by the Opponent/Party II about the Applicant/Party I abandoned her services voluntarily. Hence both these issues stand answered in the negative.

27. **Issue No 8:** This issue stands deleted as the same does not directly or indirectly touch the main dispute and that it was the matter of record that the certain essential services including print media were exempted from closure during the lockdown, hence, this issue stands answered in the affirmative.

28. **Issue No. 2 and 3:** The Applicant in her Claim Statement categorically stated as well as on oath deposed that after the refusal of employment by Mr. Mashelkar, Accounts Manager to her in the March 2021, the Applicant/Party I sent a demand letter dated 03.04.2021 Exh.17 to the Opponent/Party II and demanded reinstatement in service with full back wages and consequential benefits within 7 days. The Applicant/Party I submits that the said letter of demand dated 03.04.2021 was received by the Opponent/Party II but the Opponent/Party II did not respond to the same immediately. Thereafter, the Applicant/Party I raised the dispute before the Commissioner, Labour and Employment, Panaji. The Opponent/Party II in their reply contended that the Applicant/Party I since not approached for several months, the Opponent/Party II thought that she was not interested in joining back and that the Applicant/Party I had not reported for work for more than 2 years without any reason about her unauthorized absenteeism as such the Applicant/Party I has abandoned her services. In the reply, it is further stated that the Applicant/Party I is free to join the services once the Covid-19 situation is under control. Considering the reply of the Opponent/Party II dated 31/08/2021 at Exhibit 20, the Applicant/Party I contended that there was no defence pleaded by the Opponent/Party II that under clause 12 of the Letter of Appointment since the Applicant/Party I had absented from work for more than 7 days, she is deemed to have resigned from the service. I am in agreement with the Applicant/Party I as regards the defence of Opponent/Party II of invoking Clause 12 of the Letter of Appointment same being an afterthought in view of the fact that the Opponent/Party II had allowed the Applicant/Party I to report for work in the second fortnight of April, 2020 despite the fact that the Applicant/Party I did not report to her duty since 23/03/2020 i.e. for a period of more than a week. Be that as it may, it is a matter of record that Govt. of India and Govt. of Goa had declared lockdown on 22.03.2020 due to spread of Covid-19 virus and then said lockdown continued till first fortnight of April, 2020 and thereafter it was continued as per the guidelines of the Government. That the private and public transport were also under lockdown which fact has also been admitted by the Opponent



witness No. 1. Further, the Opponent/Party II in their Written Statement in response to the Application filed by the Applicant/Party I, has categorically stated that Applicant/Party I would be free to join the service once the Covid-19 situation improves. This show that the Opponent/Party II never had the intention to invoke clause-12 of the Appointment Letter but the Opponent/Party II used to call the workers in phase 30%, 40%, 50% approximately but it looks like the Opponent/Party II called only those workers/employees whom they wanted to work during the Covid-19 period in phases. In the circumstances above, it is absolutely incorrect on the part of the Opponent/Party II to take a stand that Party I employee abandoned her services voluntarily. The evidence on record clearly proves to show that the Applicant/Party I always wish to join her duties however she was stopped from doing so by the Party II for the reasons may be on account of Covid-19 or for any other reason but necessarily not on account of any act on part of the Applicant/Party I.

29. Even during the conciliation proceeding, the representative of the Opponent/Party II made it clear before the authority that the management is unable to accommodate the Applicant/Party I due to ongoing covid-19 situation and that they would consider her once the things get normalized. The Applicant/Party I categorically stated that pursuant to the statement of the Opponent/Party II in its reply dated 31.08.2021 (Exh.20), the Applicant/Party I approached the Opponent/Party II on 07.09.2021 to report for work. However, the security on duty did not allow the Applicant/Party I to enter the office stating that he had no instructions to allow the Applicant/Party I to enter office. The Applicant/Party I then sent a letter dated 14.10.2021 (Exh. 21) to the Opponent/Party II to intimate her the date as to when the Applicant/Party I should report to duty as mentioned in the letter dated 31.08.2021 (Exh. 20). It is, therefore, crystal clear that in terms of the letter dated 14/10/2021 at Exhibit 21 the Party I was willing to report for work and had actually reported on 07.09.2021 but was not allowed to enter the office by the security on duty giving reasons that there were no instructions to him. The Applicant/Party I has produced all the relevant evidence on record that is oral as well as documentary to show that she was willing and ready to report to her duties with the Opponent/Party II, however, she was not allowed to do so either by citing reason of Covid-19 or their inability to take her on account of the ongoing pandemic situation. It is quite obvious from the evidence on record that the Opponent/Party II has taken a contradictory stand while defending their action of refusal of employment to the Applicant/Party I. In this context *Ld. Adv. Shri P. J. Kamat* placed reliance in the case of **Gaurishelkar Vishwakarma V/s Eagle Spring Industries Pvt. Ltd & others 1988 1 CLR 38**. The Applicant/Party I submits that the Bombay High Court in the said matter at para 3 held as follows:-

*The learned Counsel..... In fact, according to Respondent No. 1 Company, there was no termination of service. Their case is that the petitioner workman had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well settled that even in the case of abandonment of service, the employer has to give a notice to the workers calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that workmen had abandoned the service..... ”*

30. The Opponent in support of their contention has placed reliance in the case of **Vijay Sathye V/s Indian Airlines Ltd and other** wherein it is held that *employee has right to abandon service any time voluntarily by submitting his resignation and alternatively, not joining or reporting for duty for a long period – Absence from duty in beginning may be misconduct , but when such absence is for long period ,it may amount*



*to voluntary abandonment of service resulting in termination of service automatically without necessitating any further order from employer.*

31. Further in the case of **D. K. Yadhav** the clause 13(2)(IV) of the standing order of the company was invoked however the Hon'ble Apex court in the said case set aside the Award of the Tribunal which was based on clause 13 of the Certified Standing Order holding that the principles of said clause of natural justice must be read into the S.O 13 (2) (iv) before invoking the said clause. Otherwise it would become arbitrary, unjust and unfair violating Article 14.

32. The Applicant in the present reference deposed that from the time of refusal of employment she is unemployed and has tried her best to secure employment but failed. That the nephew of the Applicant/Party I is supporting her from the date of her unemployment. Having pleaded so, the ratio laid down in the matter of **Deepali G Surwase V/s Kranti JR Adhya Pak Mahavidhalaya (D.Ed) & others 2014 II CLR 813 SC** becomes applicable to the facts of the case in hand wherein it is held that

*33 (iii) "Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."*

33. The Opponent/Party II has not dislodged the claim of the Applicant/Party I pursuant to the Party I having discharged her burden to prove that she never ever abandoned her services with the Opponent/Party II but it is the Opponent/Party II who at their own sweet will and perhaps for the reasons of the Covid-19 situation did not call the Applicant/Party I to work, having not discharged the burden that was shifted on to the Opponent/Party II. The Applicant/Party I having discharged the initial burden of proving that her services were not called for by the Opponent/Party II on account of pandemic and that she on her own never abandoned her service with the Opponent/Party II hence both the issues i.e. issues No. 2 and 3 stands answered in the affirmative.

Hence the following Award:

#### AWARD

- i. The Applicant/Party I has proved that she was refused work in contravention of the Industrial Disputes Act, 1947 by the Opponent/Party II and having proved the same, she is, therefore, entitled to the relief of reinstatement in the service with full back wages.
- ii. No Order as to Costs.



iii. Inform the Government accordingly.

Date: 17/02/2025;

Place: Panaji – Goa.

Sd/-

**(Vijayalaxmi Shivolkar)**

Presiding Officer

Industrial Tribunal cum

Labour Court



**Notification**

28/02/2025-LAB/Part-I/144

Date: 24-Feb-2025

The following Award passed by the Labour Court-II, at Panaji-Goa on 06/01/2025 in Case No. LC-II/IT/06/2021 is hereby published as required under section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By Order and in the name of the Governor of Goa.

*Amalia O. F. Pinto*, Under Secretary (Labour)

**THE LABOUR COURT – II  
GOVERNMENT OF GOA  
AT PANAJI**

**(BEFORE SHRI SURESH N. NARULKAR, HON'BLE PRESIDING OFFICER)**

**Case No. LC-II/IT/06/2021**

1. Shri Kuldeep Shetkar and

2. Smt. Anandi Gaude,

Both Rep. by the General Secretary  
Gomantak Mazdoor Sangh,  
G-5, Macedo Appt.,  
Tisk, Ponda, Goa – 403 401.

..... WORKMAN/PARTY-I

V/s

M/s. GVK Emergency Management  
& Research Institute,  
1<sup>st</sup> Floor, Block No.95,  
Old Library Block, Goa Medical College,  
Bambolim – Goa. 403 202.

..... EMPLOYER/PARTY-II

Party-I/Workman represented by Ld. Adv. Shri P. J. Kamat.

Party-II/Employer represented by Ld. Adv. Shri S. Gaonkar.

**PANAJI, DATED: 06/01/2025.**

**AWARD**



1. In Exercise of the powers conferred by Clause (c) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act, 14 of 1947) the Government of Goa, by Order dated 05/04/2021, bearing No. 28/07/2021-LAB/172 referred the following dispute for adjudication by this Labour Court-II of Goa.

***“(1) Whether the action of the Management of M/s GVK Emergency Management and Research Institute, Bambolim, Goa, in terminating the services of its Workman, Shri Kuldeep Shetkar, Associate Pilot and Mrs. Anandi Gaude, Associate EMT, with effect from 29/05/2020, is legal and justified?”***

***(2) If not, to what relief, the workman is entitled to?”***

2. On receipt of the reference, a case was registered under No. IT/06/2021 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short ‘Workmen’), filed their Statement of Claim on 09/08/2021 at Exhibit-4. The facts of the case in brief as pleaded by the Workmen are that Mr. Kuldeep Shetkar was initially appointed as “Associate Pilot” by the Employer/Party-II (for short, “Employer”) from 20.08.2008 to carry out the work of “Driver” on their ambulance. He stated that the said Mr. Kuldeep Shetkar was in continuous service doing the work of Driver on ambulance at Ponda District Hospital. They stated that Mrs. Anandi Gaudewas initially appointed as “Associate EMT” by the Employer from 15/8/2008 to carry out the work of Technician on their ambulance of the Employer. They stated that the said Mrs. Anandi Gaude was in continuous service doing the work of technician on the ambulance of the Employer at Ponda Sub-District Hospital. They stated that since joining, both Workmen have worked sincerely having clean service record. They stated that vide discontinuation of service letter dated 29/05/2020, their services were illegally terminated. They stated that on receipt of the discontinuation of service letter dated 29/05/2020, the Workmen submitted their reply dated 26/06/2020 and demanded an immediate withdrawal of the discontinuation of service letter and allowing them to resume the work. They stated that after their termination, the Workmen had raised an industrial dispute through their union before the Assistant Labour Commissioner-Ponda, vide the letter dated 26/06/2020.

3. They contended that before discontinuation of their services, the management has not conducted any inquiry and the principles of natural justice were not followed and therefore the termination by way of letter of discontinuation of service is illegal, unjustified and bad in law. They submitted that before the termination of their services, the management has not complied with section 25F, 25H and 25G of the Industrial Dispute Act 1947 and violated the provision of law in force and hence their termination is illegal, unjustified and bad in law. They submitted that neither the management has issued them any charge sheet nor hold any inquiry against them. They submitted that at the time of their termination, no notice pay, retrenchment compensation were paid or offered and hence their termination is illegal, unjustified and bad in law. They submitted that after their termination Mr. Kuldeep Shtkar and Smt. Anandi Gaude are unemployed and hence they are entitled for full back wages with continuity of service. They submitted that after their termination, new Workmen are being employed on their place of work and hence the Employer has violated the section 25H, 25G, of the Industrial Dispute Act, 1947. They stated that the Workmen in the reference are currently unemployed since their illegal termination and they have not been able to find any suitable job yet despite his efforts. The Workmen therefore prayed that the termination of Shri Kuldeep Shetkar and Smt. Anandi Gaude be declared as illegal, improper and unjustified and set it aside; and direct the Employer to reinstate these Workmen with full back wages and continuity of services with consequential benefits thereof;



4. The Employer filed its Written Statement on 31/12/2023 at Exhibit-22. The Employer, as and by way of its preliminary objections, submitted that it is a registered society at Hyderabad under the Andhra Pradesh Societies Registration Act, 2001 bearing registration number 187/2005 dated 07/02/2005. The Employer submitted that it is a 'not-for-profit' organization having its Head Office at Secunderabad, Telangana. The Employer submitted that it had initially entered into a Memorandum of Understanding (MOU) dated 14/06/2008 with the Government of Goa to provide comprehensive emergency response services to the State of Goa and that the Employer has been appointed as a State Level Nodal Agency to operationalize the emergency response services. The Employer submitted that subsequently supplementary MOUs and additional agreements have been entered into between themselves and the Government of Goa under which these services are being provided. The Employer submitted that it is not charging the State Government any fee or taking any money for providing the service under the said MOUs. The Employer submitted that the operational costs of providing the service including the salaries of employees engaged by them to provide the services under the MOU are being paid by the State of Goa. The Employer submitted that the State of Goa has direct control over every aspect of the said service provided by them and that the ambulances and all equipment used by them are owned by the Government of Goa. The Employer submitted that to provide these services under the said MOU, it engages the services of drivers, technicians etc. and these workers are engaged specifically to provide the services under the said MOU and it is not their 'employer' under the Industrial Disputes Act, 1947 and that the services provided by them under the said MOUs is not an 'industry' under the Industrial Disputes Act, 1947.

5. The Employer submitted that assuming (Without admitting) that this service is an 'industry' then it is an industry carried on by and under the authority of the State Government and thus, for the purposes of the Industrial Disputes Act, 1947 the State Government is the "employer" and not the Employer. The Employer submitted that it not being the "employer" under the Industrial Disputes Act, 1947 and therefore has no obligation under the said Act and that there is no employer-employee relationship between themselves and the Workmen. The Employer submitted that the present reference as made by the State Government is not maintainable on facts as well as in law. The Employer submitted that the present reference is made without any application of mind and deserves to be returned as the Workmen have never made any demand for reinstatement or raised any grievance against their alleged termination to the State Government which is their true employer, under the Industrial Disputes Act, 1947. The Employer submitted that no demand was made even to them and directly an industrial dispute was raised. The Employer submitted that the present reference is also bad in law as there is no "industrial dispute" as defined under Section 2(k) of the Industrial Disputes Act, 1947 between these two Workmen and themselves. The Employer submitted that it is not the 'employer' of these workers under the Industrial Disputes Act, 1947. The Employer further submitted that there is no common cause of action for these two Workmen for the State Government to have made one common reference for their disputes and therefore, the order of reference is bad and deserves to be returned.

6. The Employer stated that Mr. Kuldeep Shetkar was employed by them for an initial period of probation of one year and confirmed with effect from 20/08/2009. The Employer stated that Under Clause 15 of his Appointment Letter dated 10/08/2008, he has agreed that if there is any dispute in relation to his employment, the same shall be decided by way of arbitration and therefore the present reference is not maintainable. The Employer admitted that Ms. Anandi Gaude, was initially appointed as Associate EMT by them from 15/08/2008 to carry out the work of Technician on its Ambulance. The Employer submitted that Ms. Anandi Gaude was employed with themselves for an initial period of probation of one year and later confirmed with



effect from 15/09/2009. The Employer stated that Under Clause 15 of her Appointment Letter dated 13/09/2008, she has agreed that if there is any dispute in relation to her employment, the same shall be decided by way of arbitration and therefore the present reference is not maintainable. The Employer stated that the length of service or past record is not relevant in this matter as their termination is simpliciter in nature in accordance with their Appointment Letter. The Employer stated that the service was terminated as per clause 9 in Appointment Letters. The Employer submitted that they have directly raised the industrial dispute without making a demand and without first approaching the management or the State Government. The Employer submitted that the said union had no authority to raise the industrial dispute against themselves. The Employer submitted that since the terminations were simpliciter in nature and as the industrial Disputes Act does not apply to the Employer for not being the employer, there is no cause of action for the Workmen. The Employer denied that there was any requirement for conducting a disciplinary hearing as the simpliciter terminations were not on account of any misconduct. The Employer denied that the termination are illegal, unjustified or bad-in-law. The Employer submitted that they are not entitled for any relief including any back wages and continuity of service. The Employer submitted that the provisions of the Industrial Disputes Act, 1947 cannot be attracted against them and therefore there is no violation. The Employer submitted that the Workmen are not entitled to any relief against themselves and the present reference be rejected by this Hon'ble Court.

7. Thereafter, the Workmen filed their Re-joinder on 17/02/2023 at Exhibit-23. The Workmen, by way of their Re-joinder, reiterates and confirms all the submissions and averments made by themselves in their Claim Statement to be true and correct and denies all the statements and averments made by the Employer in its Written Statement which are contrary and inconsistent with the statements and averments made by them.

8. Based on the pleadings of the respective Parties filed in the present proceedings, this Hon'ble Court framed the following issues on 08/04/2022 at Exhibit-6. The said issues have been updated on 27/02/2023 at Exb.24 consequent to the written statement filed by the Employer.

1. *Whether the Party-I/Workman proves that the Union Goa Mazdoor Sangh has authority to raise the Industrial Dispute Act, 1947?*
2. *Whether the Workmen proves that the action of the Employer in terminating their services is illegal and unjustified?*
3. *Whether the Employer/Party-II proves that it does not exist Employer-Employee relationship between the Party-II and Party-I?*
4. *Whether the Employer/Party-II proves that it is not an "Industry" as defined u/s 2(j) of the Industrial Dispute Act, 1947?*
5. *Whether the Workman is entitled to any relief?*
6. *What order? What Award?*

9. **My answers to the aforesaid issues are as under:**



- |     |                 |   |                         |
|-----|-----------------|---|-------------------------|
| (a) | Issue No. 1     | : | In the Affirmative      |
| (b) | Issue No. 2     | : | In the Affirmative.     |
| (c) | Issue No. 3     | : | In the Negative.        |
| (d) | Issue No. 4     | : | In the Negative.        |
| (e) | Issue No. 5 & 6 | : | As per the final order. |

**REASONS:**

I have heard the oral arguments of Ld. Adv. Shri. P.J. Kamat, appearing for the Workmen as well as Ld. Adv. Shri. S. Gaonkar representing the Employer. I have carefully perused the entire records of the present case including the synopsis of arguments filed by both the parties. I have also considered the submissions advanced before me and is of the firm opinion as under:

**10. Issue No.1.**

The Party-II, in its written statement submitted, that the Union Goa Mazdoor Sangh has no locus standi to raise the Industrial Dispute, Act 1947. The burden to prove the said issue is on the said union to prove that it has authority to raise the industrial Disputes Act. The Party-I has relied upon the following judgments:

*11. In the case of Maharashtra General Kamagar Union V/s. Haldyan Glass reported in 2005-I CLR 668 wherein the Hon'ble High Court of Bombay has held in para 7 as under:-*

*“7. The only question is whether in a reference which has been espoused by the union regarding an individual dispute which is a deemed Industrial dispute, must the dispute be espoused by a recognized Union or must be supported by substantial number of workmen working in the Industry. We proceed on the footing that there is no material to support the contention of the Petitioner Union that it represents substantial number of workmen who were employed with respondent Company. In my opinion that would not make any difference. Whether the individual workmen raise dispute by himself or whether the dispute on his behalf is espoused by a recognized Union or substantial number of workmen in the industry would be irrelevant. The reference would be maintainable as long as the dispute falls within Section 2(A) of the Industrial Dispute Act 1947. The amendment to the law has not been made with view to defeat the rights of an individual workmen to raised dispute which earlier he could not have raised but has been done in order to enable him to get his grievances redressed even if substantial number of workmen or the recognized union in the industry does not espoused his cause. The fact that the union espoused the cause would not mean that the dispute must satisfy the ingredients of industrial dispute within the meaning of section 2 (K) of the Industrial Dispute Act. It would be sufficient that it is deemed industrial dispute within the meaning of Section 2(A) of the I.D. Act. To my mind, therefore, the order of the Labour Court in holding that reference would not be maintainable as it was not espoused by substantial number of workmen or by a recognized Union clearly discloses an error of law apparent on the face of records and award is liable to be set aside”.*

*12. In the case of the National Asphalt Product Construction Company V/s. N. M. Kothari and Ors., reported in 1997 LIC 1300 DB Bombay, wherein the Hon'ble High Court of Bombay in Paras 8 & 9 has rules as under :-*



“8....Therefore, whether the dispute referred to in the order of reference is an industrial dispute within the meaning of Cl. (k) of Section 2 or Section 2-A of the said Act, is of no consequence so far as the power of the Labour Court to adjudicate the same is concerned. So long as the dispute is one arising out of the termination of service of an employee in one of the various manners, it will constitute an industrial dispute capable of being referred to adjudication under S. 10 of the said Act.

9. The Source of power to make the reference of an industrial dispute for adjudication lies in Section 10 of the said Act. There is no provision in Section 10 which required the Government to mention, while making the reference, that is doing so in connection with an industrial dispute as defined in Section 2(k) or Section 2-A of the said Act. Hence, a mere absence of reference either to Section 2(k) or Section 2-A of the said Act, in the order of reference will not go to show that it is not an industrial dispute within the meaning of either of the two provisions. Nor is the order of reference assailable on the ground that it does not indicate whether the dispute referred is under one or the other of the two provisions, since the law does not require the Government to do so. If a question does arise as to whether a dispute is one as defined under Section 2(k) or Section 2-A, it is for the adjudication authority to ascertain the same from the material on record”.

13. The principle laid down by the High Court of Bombay in its aforesaid respective cases are well established and also applicable to the case in hand. In the case in hand, the demand were raised by the individually on the Employer. Both the Workmen also participated in the conciliation proceedings along with their representatives i.e. Secretary of the Party-I Union. The management of the Employer had also participated in the conciliation proceedings through their representative who was practicing advocate. The dispute of termination of services falls under section 2-A of the said Act. Thus, the Party-I has locus standi to raise the dispute on behalf of both the Workmen. Hence, it is held that the Party-I proves that the Union Goa Mazdoor Sangh has authority to raise the dispute under the I.D. Act, 1947. The issue No.1 is therefore, answered in the affirmative.

#### 14. **Issue No.2.**

Indisputably, the Workman Shri Kuldeep Shetkar was initially appointed as ‘Associate Pilot’ by the Employer from 20/08/2008 to carry out the work of driver on its Ambulance and his services were confirmed w.e.f.20/08/2009. He was in continuous service of the Employer from the date of his joining till the date of his discontinuation w.e.f. 29/05/2020. Similarly, Workperson Smt. Anandi Gaude, was initially appointed as ‘Associate EMT’ by the Employer from 15/08/2008 to carry out the work of Technician on their Ambulances. She was confirmed in service w.e.f. 15/09/2009. She was continuous in service of the Employer from the date of her joining till the date of discontinuation w.e.f. 29/05/2020.

15. It appears from the letter of termination dt.29/05/2020 at Exb.28 issued to both the Workmen, their services were not terminated for any reasons whatsoever otherwise then as a punishment implicated by disciplinary action and it does not include the exception given in the definition of the retrenchment. Hence it is held that the termination of services of both the Workmen amounts to illegal retrenchment.

16. Section 25(F) of the I. D. Act, 1947 is a mandatory for a valid retrenchment. Section 25(F) of the I. D. Act reads as under:



25-F. **Conditions precedent to retrenchment of workmen-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

- (a) *The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.*
- (b) *The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and*
- (c) *Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.*

17. In the case in hand, the Workman Shri Kuldeep Shetkar was in continuous service of the Employer from 20/08/2008 till the date of his discontinuation w.e.f. 29/05/2020. Similarly, Workmen Smt. Anandi Gaude was in the continuous services of the Employer from 15/08/2008 till discontinuation of her services w.e.f. 29/05/2020. Neither both the Workmen were given one month notice in writing indicating the reasons for retrenchment nor paid in lieu of such notice wages for the period of such notice nor paid the retrenchment compensation etc. Thus the action of the management of the Employer is in terminating the services of both the Workmen are illegal and unjustified.

18. The Workman Shri Kuldeep Shetkar was issued a letter of termination dated 29/05/2020 at Exb.28. Herein it has been stated that *reference to the terms of your appointment order, your services is hereby discontinued with immediate effect. You will be paid the notice period of 30 days as eligible alongwith full and final settlement. As such you are hereby relinquished of your role and responsibilities.*

19. The order of appointment letter dated 20/08/2009 (Exb.9-colly) issued to Mr. Kuldeep Shetkar indicates that either party can terminate the Employment by service a notice of 30 days. However, if approved by GVK EMRI, an Associates may surrender leave to his credit or pay salary (gross) in lieu of notice period. Similarly, GVK EMRI may pay salary (gross) in lieu of notice period if required. It is also stated in the letter of offer of appointment dated 10/08/2008 at clause 9 that *“your services can be terminated by either party, at any time during probation (including extended period, if any) with a notice of one week. Upon confirmation, one month's written notice is required to be given or by payment of one month gross of salary inclusive of allowances, in lieu of notice”*.

Thus, as per the said clause the Employer was required to give notice of 30 days before termination or pay in lieu of notice if no notice is given. The Employer has failed to give such notice at the time of termination and even thereafter, nor paid notice wage in lieu of notice.

20. *In the case of Sr. Superintendent, R.M.S.Cochin and Anr. V/s K. V. Gopinath, Sorter, Reptd in 1972 SCLJ 120 the Hon'ble Apex Court held that “when Rule 5 (1) (a) of the Central Service (Temporary Service) Rules 1965 gives the Government as well as the employee a right to put an end to the service by a notice in writing, by payment of a sum equivalent to the amount of pay plus allowance for the period of notice, such payment has to be simultaneous with the payment to the employees of whatever is due to him”.*



21. The principle laid down by the Hon'ble Apex Court in his aforesaid case is well recognized and applicable to the case in hand. In the case in hand, neither the Employer offered nor paid the notice wage as provided under the letter of appointment and as such the action of the Employer, the termination of services of the Workmen is illegal, unjustified and bad-in-law.

Even otherwise, the management submitted that the termination of services of the Workmen are termination simpliciter in nature in accordance with appointment letter. The Workmen contended that the termination of services is illegal and bad-in-law and relied upon the following judgments.

22. *In the case of L. Micheal & anr. V/s. Johnson Pumps India Pvt. Reported in 1975 (30) FLR 140 wherein the three judges Bench of the Hon'ble Supreme Court has held as under:-*

*“the above study of the chain of ruling brings out the futility of the contention subsequent to Murugan Mill's case (2) colourable exercise of power has lost validity and loss of confidence has gained ground. The law is simply this: The Tribunal has the power and, indeed, the duty to X-ray the order and discover its true nature. If the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the Management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-Looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new armour for the management; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neo-formula. Loss of confidence in the Law will be the consequence of the loss of confidence doctrine. Before conclude we would like to add that an employer who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the condition and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere while or fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly with due care and prudence. If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimization on grounds of his impugned action so that the same may be tested judicially. In the instant case this has not been done. There is only the ipse dixit of the employer that he was suspecting since 1968 that the appellant was divulging secrets relating to his business. The employer has not disclosed the grounds on which this suspicion arose in 1968. Further, after 1968, the appellant was given two extra increments, in addition to his normal increments, as stated already, in appreciation of his hard work. This circumstances completely demolishes even the whimsical and tenuous stand taken by the employer. It was manifest therefore that the impugned action was not bona fide.*

23. The principle laid down by the Hon'ble Apex Court is well established and also applicable to the case in hand. In the case in hand the Employer terminated the services of the Workmen under clause 9 of the appointment letter when the said Workmen had rendered continuous services of around 12 years. The Employer had also failed to give notice of one month or pay in lieu of notice as provided under clause 9 of the said letter of appointment and thus the order of termination is illegal and bad-in-law and colorable exercise powers.



24. Ld. Adv. Shri S. Gaonkar representing the Employer submitted that the term retrenchment falls under IIIrd Schedule to be tried by the Industrial Tribunal and as such this Hon'ble Labour Court-II has no jurisdiction to adjudicate the present reference.

25. Section 10 of the I. D. Act provides for reference to a disputes to Boards Courts and Tribunals and its reads as under:

**“10. Reference of disputes to Boards, Courts or Tribunals:-**

*(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing –*

*(a) Refer the dispute to a Board for promoting a settlement thereof; or*

*(b) Refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or*

*(c) Refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*

*(d) Refer the dispute or any matter appearing to connected with, or relevant to, the dispute, whether it relates to any matter specified, to a Tribunal for adjudication:*

*Provided that where the dispute relates to any matter specified in the Third schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c)”.*

7. *The Second and the Third Schedule attached to the I. D. Act required for proper appreciation of the arguments, are extracted below:*

**“THE SECOND SCHEDULE  
MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS**

1. *The propriety or legality of an order passed by an employer under the standing orders;*
2. *The application and interpretation of standing orders;*
3. *Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;*
4. *Withdrawal of any customary concession of privilege;*
5. *Illegality or otherwise of a strike or lock-out; and*
6. *All matters other than those specified in the Third Schedule.*

**THE THIRD SCHEDULE  
MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS**

1. *Wages, including the period and mode of payment;*



2. *Compensatory and other allowances;*
3. *Hours of work and rest intervals;*
4. *Leave with wages and holidays;*
5. *Bonus, profit sharing, provident fund and gratuity;*
6. *Shift working otherwise than in accordance with standing orders;*
7. *Classification by grades;*
8. *Rules of discipline;*
9. *Rationalisation;*
10. *Retrenchment of workmen and closure of establishment; and Any other matter that may be prescribed."*

26. Section 10(1) of the I. D. Act inter alia provides that where appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, by an order in writing, refer the dispute to the 'Labour Court' if it relates to the issues specified in the Second Schedule. Where the matter relates to the issues specified in the Third Schedule, the dispute is to be referred to a Labour Court, if the dispute is not likely to affect more than 100 Workmen.

27. In the case of **Hind the filters Ltd. and another V/s. in the Filters Employees Union and Anr. in Civil Appeal No.8801 of 2012 of Hon'ble Apex Court** there were more than 100 workers in the establishment on the contrary, in the present reference issued by the appropriate Government to the Labour Court-II considering the two Workmen only and as such this Hon'ble Labour Court-II has every jurisdiction to adjudicate the said reference. Ld. Adv. S. Gaonkar also relied upon a judgment of Hon'ble Apex Court in the case of **U.P. Electric Supply Company Ltd. V/s. R K Shukla and Anr. Reported in (1969) to SCC 400**. The principle laid down by the Hon'ble Apex Court in its case of U.P. Electric Supply Company Ltd. (Supra) is not applicable to the case in hand as the facts of the case before the Hon'ble Apex Court is different than the case in hand.

28. Ld. Adv. Shri S. Gaonkar representing the Employer further submitted that the Workmen have directly raised an Industrial Dispute without making a demand and without first approaching the management and as such the present reference is not maintainable and relied upon a judgment of Hon'ble Apex Court in the case of **Sindhu resettlement Corporation Ltd. V/s. Industrial Tribunal of Gujarat and Ors. Reported in AIR 1968 SC 529**. However, I do not find any merits in the submissions of Ld. Adv. Shri S. Gaonkar representing the Employer as the services of both the Workmen were terminated by discontinuation of services letter dt. 29/5/2020 at Exb.28 and Exb.35. By letter dated 26/6/2020 (Exb.29) and letter dated 23/6/2020 (Exb.47-Cross) both the Workmen had made a demand letter for reinstatement with full back wages and thereafter the union made a letter dated 26/6/2020 to the ALC, and conciliation Officer (Exb.30) for intervention. Thus, the principle laid down by the Hon'ble Apex Court in its case of Sindhu resettlement Corporation Ltd. (Supra) is not applicable to the case in hand.



Hence it is held that the Workmen proved that the action of the Employer in terminating their services is illegal and unjustified. The issue No. 2 is therefore answered in the affirmative.

29. **Issue No.3:**

Ld. Adv. Shri S. Gaonkar representing the Employer submitted that the Party-II is not the Employer of the Workmen under the I.D. Act, 1947 and relied upon a judgment of Hon'ble Apex Court in the case of **Heavy Engineering Mazdoor Union V/s. State of Bihar and Anr. reported in 1969)1SCC 765** the facts of the case before the Hon'ble Apex Court is totally different then the case in hand and as such the principle laid down by the Hon'ble Apex Court in its aforesaid judgment is not applicable to the case in hand.

The term “**Employer**” has been defined u/s 2(g) of the I.D. Act, 1947 and it means-

*(i) in relation to an industry carried on by or under the authority of any department of (the Central Government or a State Government), the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*

*(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;*

30. In the case in hand, the Party-II is a Society established under the Registration of Societies Act and is engaged in providing emergency services in the nature of medical attendance/treatment in emergent situations. The MOU (Exb.34) on record indicates that it is the responsibility of the Party-II to operate the ambulances and ensure ambulances services are available on 24 hours per day and 365 days a year basis and to provide the emergency health transportation services to ambulances of the public and for that purpose recruit, position and train required human resources including pilots (drivers) and medically trained person (Emergency Medical Technician).

31. The First Witness of the Party-II Shri Adolf Pacheco, in his evidence on record indicates that the Party-II is a registered society at Hyderabad under the Andhra Pradesh Society's Registration Act, 2001. He deposed that Govt. of Goa has direct control over every aspect of the said services provided by the Employer / Party-II. He deposed that to provide these services under the said MOU, the Party-II engages the services of Driver, Technician etc. In his cross examination, he admitted that under clause 2(b) of the Exb.35 it is provided that the development, management and functioning of all the facilities and services herein provided shall be responsibility of the Employer/Party-II. He admitted that under clause III (10) of Exb.35 it is provided that the Employer/Party-II shall maintain separate financial accounts and records of its operation in Goa. He admitted that under clause III(6) of Exb.35 it is provided that the Employer/Party-II shall recruit, position and train required human resources, including pilots (drivers) and medically trained persons (Emergency medical technicians) is the responsibility. He admitted that the MOU produced on records by him nowhere provides for recruitment of employees by the Govt. of Goa for Employer/Party-II. He admitted that under clause Xiii of Exb.57 it is the responsibility of Employer/Party-II to observe all the rules and regulations regarding recruitment of staff, purchase of store, awarding of contracts etc. and other expenditure as per the rules framed by the Govt. He admitted that under clause 7 (b) in Exb.14 it is provided that annual increments, pay package



and pursuits to its employees are the responsibility of Employer/Party-II. He admitted that under clause 4(2) of Exb.42 it is provided that the Employer/Party-II shall have autonomy and operational freedom to the Party-II towards, selection, hiring appraisals, transfers and termination/dismissal of staff, freedom to avail the staff cum HR agencies, preparation of training modules. He admitted that the document at Exb.35 to 42 all the offer of appointments, letter of appointment, confirmation of Employees and dismissal of employees is the sole responsibility of the Party-II and the Government of Goa has no part to play. He admitted that the document at Exb.44, Exb.9 and letter of termination at Exb.46-colly were issued by the Party-II. He admitted that offer of appointment to Mrs. Anandi Gaude at Exb.45 are letter of confirmation at Exb.26 and letter of termination at Exb.46-colly were issued by the Party-II. He admitted that the Party-II establishment is covered under the Employees Provident Fund and miscellaneous Provident Fund, 1952 and schemes there under as well as the Employees State Insurance Act, 1958 and Schemes there under:

He admitted that all the employees of Employer/Party-II were appointed by the Party-II. He also admits that the day today attendance of the employees has been maintained by the Employer/Party-II. Thus, the Employer has not signed/execute any tripartite agreement with the Govt. of Goa and the Workmen.

32. The aforesaid evidence on record clearly indicates that the Employer/Party-II is the “**Employer**” as has been defined u/s 2(g) of the I. D. Act, 1947 in respect of both the Workmen and the Government of Goa was not the Employer of the Workmen. Thus, there exists an Employer-Employee relationship between the Party-II and Party-I. Hence it is held that the Employer failed to prove that there does not exist employer-employee relationship between the Party-II and Party-I. The issue No.3 is therefore answered in the Negative.

### 33. **Issue No.4**

Ld. Adv. Shri S. Gaonkar also submitted that the Party-II is not an “industry” as defined u/s 2(j) of the I.D. Act, 1947.

It is noticed that the term “industry” has been defined u/s 2(j) of the I.D. Act, 1947 and it reads as under:

*(j) any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,-*

*(i) any capital has been invested for the purpose of carrying on such activity; or*

*(ii) such activity is carried on with a motive to make any gain or profit, and includes –*

*(a) any activity of the Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);*

*(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include –*

*(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.*



*Explanation – For the purposes of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; or*

*(2) hospitals or dispensaries; or*

*(3) educational, scientific, research or training institutions; or*

*(4) institutions owned or managed by organisation wholly or substantially engaged in any charitable, social or philanthropic service; or*

*(5) khadi or villag*

*(6) e industries; or*

*(7) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space;*

*(8) any domestic service; or*

*(9) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or*

*(10) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.*

34. In the case of **Bangalore Water Supply and Sewarage Board etc. Vs. A. Rajappa & Ors.** reported in **1978 (36) FLR 266**, wherein the Constitution Bench of 7 judges has held as under :

- a. Where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimetrical. (iii) for the production and /or distribution of good and service calculated to satisfy Human wants and wishes (not spiritual or religious but inclusive of material things or serves geared to celestial bliss i.e. making on a large scale prassad or goods prime facie, there is an industry in that enterprise.
- b. Absence of profit motive or gainful objection is irrelevant, be the venture in the public joint, private or other sector.
- c. The true focus functional and for decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- d. If the organization is a trade or business it does not cease to be one because the philanthropy animating the undertaking.

35. In the case in hand, the Employer had signed MOU with the Govt. of Goa and had agreed to provide emergency management and research services and for that purpose the Employer has engaged certain staff.



Thus, the Employer undertook systematic activities with the help of the employees engaged by the Employer with a view to satisfy human wants or wishes. The agreement which is on record indicates that there were reciprocal promises between the Employer and the Government of Goa. These reciprocal promises formed the basis of consideration between the Employer and the Government of Goa. Thus, amounting to an agreement under the Indian Contract Act, 1872.

Transporting Road Accident Victims is not the sole preserve of the State Government. It is noticed that there are private individuals also running ambulance services to fulfil human wants and wishes. The Employer is also one of such Service Provider. It provides the services and to do so it has taken the format prescribed under Andhra Pradesh Society's Registration Act.

Per the said Act, the said society can sue and be sued per section 19 of the Andhra Pradesh Societies Registration Act, the said society "may bring or defend of other legal proceeding touching or concerning any property or any right or claim of the society and may sue and be sued in its name".

Thus, the Employer is an "industry as defined u/s 2(j) of the I.D. Act, 1947.

In view of above I do not find any merit whatsoever in the submission of Ld. Adv. Shri S. Gaonkar representing the Employer that the Employer is not an Industry as defined under the Industrial Disputes Act, 1947. Hence it is held that the Employer failed to prove that it is not an "industry" as defined u/s 2(j) of the I.D. Act, 1947. The issue No.4 is therefore answered in the Negative.

### 36. **Issue No.5:**

While deciding the issue No.2 hereinabove, I have discussed and come to the conclusion and held that the workmen proved that the action of the management of the Employer in terminating their services is illegal and unjustified.

Ld. Adv. Shri P. J. Kamat representing the workmen submitted that the Party-I are unemployed since their illegal termination and that they could not find any suitable job despite efforts. He submitted that the Employer did not deny the aforesaid pleadings, written statements and relied upon a judgment of Hon'ble Apex Court.

37. *In the case of Deepali g. Surwase V/s Kranti JR Adhya Pak Mahavidhalaya (D.Ed.) & others reported in 2014 II CLR 813 SC wherein in para 33 has ruled as under:*

33 (iii) " Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee show that he was not employed, the onus lies on the employer to specifically



*plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."*

38. The principle laid down by the Hon'ble Apex Court is well established and also applicable to the case in hand. In the case in hand the Party-I stated that since after their illegal termination they are unemployed and could not find any suitable job despite efforts. The said fact has not been denied by the Employer in their written statement nor produced any evidence as to the employment to the said Employee. Hence both the Workmen are entitled to the relief of reinstatement in service with full back wages and other consequential benefits thereof.

In view of above, I proceed to pass the following order:

### **ORDER**

1. It is held that the action of the Management of M/s. GVK Emergency Management & Research Institute, Old Library Block, Goa Medical College, Bambolim, Goa, in terminating the services of its Workmen, Shri Kuldeep Shetkar, Associate Pilot and Smt. Anandi Gaude, Associate EMT, with effect from 29/05/2020, is illegal and unjustified.
2. The Management of M/s. GVK Emergency Management & Research Institute, Old Library Block, Goa Medical College, Bambolim, Goa, is hereby directed to reinstate in their services both the Workmen namely Shri Kuldeep Shetkar and Smt. Anandi Gaude alongwith full back wages and consequential benefits thereof.
3. No order as to cost.
4. Inform the Government accordingly.

**(Suresh N. Narulkar)**  
Presiding Officer  
Labour Court-II



### **Notification**

28/02/2025-LAB/Part-I/171

Date: 05-Mar-2025

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 21/02/2025 in Case Ref. No. IT/05/2015 is hereby published as required under section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By Order and in the name of the Governor of Goa.

*Amalia O. F. Pinto*, Under Secretary (Labour)



(BEFORE MRS. VIJAYALAXMI SHIVOLKAR, PRESIDING OFFICER)

Ref. No. IT/05/2015

Shri Sandeep G. Tambe & 30 others  
 R/B. Goa Trade & Commercial Workers' Union  
 Velho Building,  
 Panaji – Goa ..... Workmen/Party I

V/s

1. Flex Art Foil Ltd.  
 Industrial Estate, Corlim- Goa ..... Employer/Party II(1)
2. SCV Co-operative Bank Ltd.  
 EVC Tower, Jawaharlal Nehru Road  
 Mumbai ..... Employer/Party II(2)
3. Mr. Sudip Dutta  
 Flat No. 506,  
 Thakur Village  
 Kandiwali (East) Mumbai ..... Employer/Party II(3)
4. Mrs. Aarti Sudip Dutta  
 Thakur Village,  
 Kandiwali (East) Mumbai ..... Employer/Party II(4)

Workmen/Party I represented by Ld. Adv. Suhaas Naik.

Employer/Party II(1) represented by Learned Adv. Shri. M. S. Bandonkar.

Employer/Party II(2) to (4) represented by None, marked Ex-parte.

### **AWARD**

**(Delivered on this the 21<sup>st</sup> Day of the Month  
 of February of the Year 2025)**

By Order dated 21.01.2015, bearing No. 28/48/2014-Lab/24 the Government of Goa in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947)(hereinafter referred to as the “said Act”), the existing dispute between the Management of M/s. Flex Art Foil Limited, Corlim Industrial Estate, Corlim, Goa and Shri Sandeep G. Tambe & 30 others represented by Goa Trade & Commercial Workers Union Panaji – Goa for adjudication to the Industrial Tribunal of Goa at Panaji Goa, constituted under section 7-A of the said Act.

### **SCHEDULE**

- (1) Whether the action of the management of M/s. Flex Art Foil Limited, Corlim Industrial Estate, Corlim, Goa, in declaring closure of the establishment with effect from 10/04/2014 and thereby terminating the services of the following 31 workmen, represented by the Goa Trade and Commercial workers' Union, is legal and justified?

Serial No.	Name of the workmen
1	Mr. Sandeep Ganpat Tambe
2	Mr. Khema Madhukar Parab



3	Mr. Umesh Baburao Parab
4	Mr. Vaibhav Vijay Dalvi
5	Mr. Dattaram Arjun Parab
6	Mr. Shankar Chandrakant Parab
7	Mr. Gurunath Sitaram Tambe
8	Mr. Madan Govind Parab
9	Mr. Parag Sharad Manjarekar
10	Mr. Nilesh Nagesh Dalvi
11	Mr. Gangaram Prabhakar Pawar
12	Mr. Nilesh Babali Kumbhar
13	Mr. Krishna Mhalsekar
14	Mr. Pasku Santan Fernandes
15	Mr. Laue Krishna Gawas
16	Mr. Vijay Atmaram Painaik
17	Mr. Gurunath Vasant Kale
18	Mr. Sunil Ganpat Sawant
19	Mr. Raghunath Ganpat Naik
20	Mr. Gajanan Govind Parab
21	Mr. Santosh Daji Shedage
22	Mr. Ranjit Prabhakar Pawar
23	Mr. Kiran Gurunath Kumbhar
24	Mr. Sameer Rajaram Garathe
25	Mr. Nitin Madhukar Parab
26	Mr. Praveen Prakash Dhond
27	Mr. Avinash Bharat Taral
28	Mr. Tarkesh Ganpat Kasavakar
29	Mr. Manohar Digamber Sawant
30	Mr. Uday Vaman Rambade
31	Mr. Shantaram Bhagvan Korgoankar

(2) If not, what relief the workmen are entitled to?”

2. Upon receipt of the reference, it was registered as IT/05/2015 and registered A/D notices were issued to both the Parties. Pursuant to service of notices, the Party I thereafter filed the Statement of Claim at Exhibit 4. The present Statement of Claim is filed on behalf of all the 31 unionized workmen in respect of the illegal



termination of their services w.e.f 10/04/2014 by the Management of Party II/Employer under the grab & guise of illegal closure of its establishment situated at Corlim Industrial Estate, Corlim, Goa. The Party I stated that all the 31 workmen named in the present Order of Reference are the unionized members of Goa Trade & Commercial Workers' Union (AITUC) which Union has espoused the cause of these workmen before every competent forum and authorities.

3. The Party I/Workmen states that the decision of the Party II/ Management of Flex Art Foil Ltd. to close its Factory w.e.f closing hours of 10<sup>th</sup> April, 2014 is illegal, unjust and bad-in-law, as no circumstances have arisen for the management to close the above Factory. The Party I/workmen states that the proposed decision of the Management to close its activities at the above factory w.e.f closing hours of 10<sup>th</sup> April, 2014 is in attempt made by the Employer to terminate the services of all permanent, temporary and casual workmen under the grab and guise of closure of the above factory and thereafter to recruit new contract, daily wage and casual workmen in the place of these workmen.

4. The Union submits that the closure enforced by the Management w.e.f. 10.04.2014 is patently unjust and improper and the reasons cited therein are totally illegal, not true, real, genuine and adequate and the same is a mere pretence to terminate the service of these permanent workmen. The Party I/Workmen states that after "unionization" the Management started discriminating in allotting overtime to the workmen and also started transferring the workmen to other states in order to take revenge on the workmen, hence a Notice of Strike dated 21.12.2013 was served on the management for the reasons set out in the said Strike Notice.

5. The Party I/Workmen states that the Office of the Labour Commissioner immediately took cognizance of the said Strike Notice dated 21.12.2013 and admitted the matter in conciliation with clear direction to the Management not to change the existing service conditions of the workmen. The Management was advised to maintain normalcy. However, when the said conciliation proceedings were on before the Office of the Labour Commissioner, the Management shifted its entire machinery, raw material and finished products from the above factory under threats and force and subsequently for the first time vide letter dated 13.05.2014 enforced the illegal closure with retrospective effect effective from 10.04.2014 as an afterthought since the Union had withdrawn the strike Notice dated 21.12.2013.

6. The Union submits that the closure has been enforced by the Management to take revenge on the workmen with malice and mala fide intention. The Party I/Workmen states that all the workmen on the rolls of the Company are entitled for full wages, continuity in service and all other consequential benefits. The Party I workmen states that the management though declared closure of its Factory situated at Corlim, in reality the business of the Party II has not closed down entirely but the business has been deliberately and intentionally diverted by the Management to its other factories situated at Daman, Vasai, Bangaluru, outside Goa in order to create an artificial situation of no Work Orders for the Factory at Corlim, Goa to subsequently terminate the services of these 31 permanent unionized workmen.

7. It is stated that through the Party II Employer declared the closure, no compensation of whatsoever nature has been paid to these workmen. In the Circumstances it is prayed that the termination of the services of the 31 workmen named in the present Order of Reference be held illegal, unjustified and bad in law and the closure declared by the Party II/Employer w.e.f. 10.04.2014 of its factory at Corlim, Goa be held illegal, unjustified and bad-in-law.



8. In its Written Statement filed at Exhibit 6, the Party II in its preliminary objections submitted that the termination of the services of the workmen concerned in the present reference is the consequences of real closure and therefore no dispute of whatsoever nature survives and reference ought to be rejected in total. The company while implementing the effective and real closure, complied with the provisions of the Act and the workers have been paid the closure compensation and other dues which are accepted by the workmen voluntarily.

9. The Management/Party II submitted that it was running its business of aluminum foil packaging at its undertaking at Corlim Industrial Estate, Corlim for the last 15 years. That the management received Charter of Demand from the Goa Trade and Commercial Workers' Union on 15/02/2011 and after various discussions within the Parties, the management signed a settlement on Charter of Demands dated 04/08/2012 with the said union giving substantial benefits to the workmen as per financial capacity of the Company. The said settlement was also registered before the Commissioner of Labour, Panjim on 06.08.2012.

10. The Party II submits that on 03/10/2013, they received a letter from the said Union regarding the grievances of the workmen whereby the Management replied to the said letter of the Union vide its reply dated 14<sup>th</sup> October, 2013. Thereafter a notice dated 04/11/2013 was displayed on the Notice Board informing all the workers that due to business constrains, the management is compelled to run one shift in place of two shifts with effect from 11<sup>th</sup> November, 2013. The Union replied to the said notice of the management vide their reply dated 08/11/2013, however the contents of the said reply are not correct and denied.

11. The Party II submits that thereafter various letters were issued to the workmen transferring their services to different establishment as per Appointment Letter issued to them and as per law and contract of services. It was however surprising that none of the workmen reported at the transferred place. The Union thereafter gave notice of strike dated 21/12/2013 stating amongst other things that if the management does not withdraw the transfer notice, they would resort to strike w.e.f. 10<sup>th</sup> January 2014. The Party II submits that due to the strike resorted to by the workmen, the entire production came to standstill. The work which was taken of the customers, by the Party II Company could not be completed and the Party II went into tremendous loss and all the customers lost confidence in the Party II/Company.

12. The Party II submits that thereafter the matter was referred to the Labour Commissioner and various meetings were held before the Labour Commissioner in connection with the situation created by the Workmen/Union bringing the entire production at standstill. The Party II submits that the Union however took a stand that unless transfer notices issued to various workmen are not withdrawn, strike resorted by other workmen would continue.

13. The Party II submits that thereafter the Party II/Management had no choice and it was beyond the control of the management and therefore management had to implement the unpleasant decision to permanently close its undertaking at Corlim Industrial Estate, Corlim Goa w.e.f. 10/04/2014 and the Management permanently and factually closed its undertaking at Corlim, Goa w.e.f. 10.04.2014. It is pertinent to note that the Union withdrew the strike after the management permanently closed the undertaking w.e.f. 10/4/2014 and notice of withdrawal of strike was given on 15/04/2014, therefore the withdrawal of strike had no relevance.



14. The Party II submits that thereafter the Union raised the dispute in respect of illegal closure before the Labour Commissioner vide their letter dated 26/05/2014, which was replied by the management dated 26/06/2014, which is self-explanatory and since there was no amicable settlement between the Parties, the conciliation ended in failure. The Party II submits that the entire dispute does not have any legal standing and all the requirements of Closure have been complied by the Company.

15. In the Rejoinder filed by the Party I Union, the Party I denied the defence taken by Party II in their Written Statement and maintained and reiterated the facts stated in their Claim Statement.

16. Considering the pleadings filed by both the Parties, following Issues were framed by this Tribunal on 08/06/2017 at Exhibit 11.

### **ISSUES**

1. Whether the Party I proves that the closure declared by Party II w.e.f. 10.04.2014 of its factory at Corlim, Goa is illegal, unjustified and bad in law?
2. Whether the Party I proves that the termination of the services of 31 workmen w.e.f. 10.04.2014 is illegal, unjustified and bad in law?
3. Whether Party II proves that the Tribunal has no jurisdiction to try and entertain the present dispute?
4. What Order? What Relief?

17. I have gone through the records i.e. the pleadings, the oral as well as documentary evidence adduced by both the Parties, the written synopsis filed by the Party II, the oral arguments advanced by both the Parties and after considering the same my findings on the issues with reasons are as follows:

**Issue No. 1 & 2 : In the Negative**

**Issue No.3 : In the Negative**

**Issue No.4 : As per Final Order**

18. **Issue No 1 & 2:** It is in the evidence of Shri Ranjendra Datta Mangueshkar, the witness examined by the Party I, that the closure enforced by the Management w.e.f. 10.04.2014 is patently unjust and improper and the reasons cited therein are totally illegal, not true, real, genuine and adequate and the same is a mere pretence to terminate the services of these permanent workmen. It is further stated that the Party I workmen after their unionization, the Management started discriminating in allotting overtime to the workmen and also started transferring the workmen to other states in order to take revenge on the workmen. His evidence further reveals that Office of the Labour Commissioner immediately took cognizance of the said Strike Notice dated 21.12.2013 and admitted the matter in Conciliation with clear direction to the Management not to change the existing service conditions of the workmen. The Management was advised to maintain normalcy. However, the management vide letter dated 13.05.2014 enforced the illegal closure with retrospective effect effective from 10.04.2014 as an afterthought since the Union had withdrawn the strike Notice dated 21.12.2013. He further stated that all the workmen on the rolls of the Company are entitled for full wages, continuity in service and all other consequential benefits. That the management has not closed the entire business but deliberately



and intentionally diverted the same to its other factories situated at Daman, Vasai, Bengaluru outside Goa. He further stated that though the Party II Employer declared the closure, No compensation of whatsoever nature has been paid to these workmen. As against this, the witness in its cross-examination categorically admitted that as per the reference the Factory has been closed w.e.f. 10/04/2014 and consequently the services of the workmen were terminated, thus the Party I has admitted and accepted the fact that the Factory has been closed w.e.f. 10/04/2014. As regards to the legal dues when suggested to Workmen witness that the document produced by the Company shows that upon closure, money has been paid to the workmen and that the workmen has withdrawn their Provident Fund to which the witness stated that he does not agree that the money has been paid. This witness in the cross-examination specifically did not deny that no money has been paid to the workmen upon the closure of the Company but refused to accept the document produced by the Company revealing the payment of dues to the workmen upon the closure of the Company. As regards to the Claim of the Party I that the closure has been affected so that the Company can employ the new workers on contract, temporary and permanent basis, however, in the cross-examination Workmen witness admitted he has not mentioned the name of any worker being recruited by the Company after its closure. WW1 in his cross-examination admitted and accepted the fact of the closure of the Factory. The Party I have failed to produce any evidence to show that the management has diverted his business to its other places.

19. Though the Party I claimed that the closure of the Factory is illegal and unjustified, however, did not specify Party II having violated any provisions of Section 25 (O) of the Industrial Disputes Act, 1947. Section 25 (O) of the Act mandates certain requirement for an employer to close down an undertaking i.e.

*An employer must apply for permission to close down an industrial establishment at least 90 days before the intended closure date.*

*The application must be made to the appropriate government.*

*The application must state the reasons for the closure.*

*A copy of the application must be served on the representatives of the workmen.*

20. From the fact of the reference and from the pleadings of the Parties as well as evidence on record, it is seen that the Party II has complied with all the requirements in terms of Section 25 of the Industrial Disputes Act, 1947. Whereas, the Party I/Workmen could not bring anything on record contrary to the compliance carried out by the Party II to show that the closure of the Factory was illegal and unjustified or that all the 31 workmen under the reference denied employment illegally by Party II, consequently, both the issues stands answered in the negative.

21. **Issue No 3:** In the Written Statement the Party II pleaded that on 03/10/2013, the company received a letter from the Party I/Union regarding the grievances of the workmen. Management replied to the said letter of the Union vide its reply dated 14<sup>th</sup> October 2013. Thereafter, a notice dated 04/11/2013 was displayed on the notice board informing all the workers that due to business constrains, the management is compelled to run one shift in place of two shifts with effect from 11<sup>th</sup> November 2013. Thereafter various letters were issued to the workmen transferring their services to different establishment as per appointment letter issued to them and as per law and contract of services. However none of the workmen reported at the transferred place. The Union thereafter gave notice of strike dated 21/12/2013 stating amongst other things that if management do not withdraw the transfer notice, they would resort to strike w.e.f. 10<sup>th</sup> January 2014. The Party II submits that



due to the strike resorted to by the workmen, the entire production came to standstill. The work which was taken of the customers, by the Company could not be completed and the company went into tremendous loss and all the customers lost the confidence in their Company.

22. Thereafter, the matter was referred to the Labour Commissioner and various meetings were held before the Labour Commissioner in connection with the situation created by workmen/union bringing the entire production to a standstill. The Union however took a stand that unless transfer notices issued to various workmen are not withdrawn, strike resorted by other workmen would continue.

23. Thereafter, the Party II had no choice and it was beyond the control of the management and therefore the Party II had to implement the unpleasant decision to permanently close its undertaking at Corlim Industrial Estate, Corlim Goa w.e.f. 10/04/2014 and the management, permanently and factually closed its undertaking at Corlim Goa w.e.f. 10.04.2014. The Party II thus in their Written Statement has pleaded the circumstances under which they had to close down their establishment. From the pleadings above, it also reveals that the Party II has complied with all the legal requirement in terms of Section 25 (O) of the Industrial Disputes Act, 1947.

24. In the case of **Pottery Mazdoor Panchayat V/s The Perfect Pottery Co-operative Limited and others** it is held that *“the references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management. We are, therefore, of the view that the High Court was right in coming to the conclusion that the two Tribunals had no jurisdiction to go behind the references and inquire into the question whether the closure of business, which was in fact effected” was decided upon for reasons which were proper and justifiable. The propriety of or justification for the closure of a business, in fact and truly effected, cannot raise an industrial dispute as contemplated by the State and Central Acts.*

25. In the case of **Pipraich Sugar Mills Ltd. V/s Pipraich Sugar Mills Mazdoor Union** it is held that *“the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry. Therefore, where the business has been closed and it is either admitted or found that the closure is real and bonafide, any dispute arising with reference thereto would as held by Madras High Court in K.M. Padmanabha Ayyar v. State of Madras fall outside the purview of Industrial Disputes Act. And that will a fortiori be so, if a dispute arises if one such can be conceived after the closure of the business between the quondam employer and Employees.*

26. Thus from the clean reading of the reference, the statement of Claim and evidence on record duly supported by the citation above it is crystal clear that this Tribunal lacks jurisdiction or go into the proprietary and validity of the justification given by the Party II for closure of its establishment once the Party II proves that they have complied with the requirement of section 25(O) of the Act. However, at the same time the objection raised by the Party II and the issue that has been framed saying that this Tribunal has no jurisdiction to try and entertain the present dispute cannot be said to be proved by the Party II, this Tribunal having given its decision in respect of issue No. 1 and 2 for the reasons stated therein the issue No 3 therefore stand answered in negative.



27. This is a peculiar case wherein the employer has not only complied with all the pre-conditions before closing their establishment but also paid to all the 31 workmen their legal dues in terms of clause 8 of Section 25 (O). The Party II/Employer vide its letter dated 03/05/2014 addressed to all the 31 workmen under the reference paid to them their legal dues by drawing cheque in their favour, the details of the cheque has been mentioned on the said letter. The said letter further speaks about the employer asking all the workmen under the reference to collect their Provident Fund from Mr. Danashyam Gaude after 13/05/2014. Be that as it may, the Ld. Adv. Shri S. Naik at the time of final arguments brought to the notice of this Tribunal that though all the workmen under the reference received the cheque individually towards their legal dues, however, for the reasons not known the workmen did not encash the amount.

28. Admittedly, non-encashment of the cheque by the Party I/Workmen cannot be said to be non-payment of dues by the Employer. However, the fact remains that the workmen have not received their legal dues. Considering this as a beneficial legislation for the welfare of the workmen and for the protection of their legal right, this Tribunal would fail in its duty if restricted only to passing of the Award pertaining to legality or illegality of the closure and not take into consideration the factual situation of the workmen having not received the amount despite fair practice adopted by the Employer. Therefore, no prejudice will be caused to the Employer if the workmen are paid their legal dues by issuing fresh cheques to that effect.

Hence the following Award:

#### AWARD

- i. The Party I Employer is hereby directed to issue fresh cheques by replacing the one which were issued along with the letter dated 03/05/2014 for the same amount to all the 31 workmen under the reference.
- ii. No Order as to Costs.
- iii. Inform the Government accordingly.

Date: 21/02/2025;  
Place: Panaji – Goa.

-Sd/-  
(Vijayalaxmi Shivolkar)  
Presiding Officer  
Industrial Tribunal cum  
Labour Court



#### Notification

28/02/2025-LAB/Part-II/156

Date: 28-Feb-2025

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 17/02/2025 in Case Ref. No.IT/01/2014 is hereby published as required under section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By Order and in the name of the Governor of Goa.  
*Amalia O. F. Pinto*, Under Secretary (Labour)



**IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT  
GOVERNMENT OF GOA AT PANAJI**

(BEFORE MRS. VIJAYALAXMI SHIVOLKAR, HON'BLE PRESIDING OFFICER)

**Ref. No. IT/01/2014**

Shri Prasad Puranik & 2 Others,  
Rep. by the General Secretary,  
Gomantak Mazdoor Sangh,  
G-5, Macedo Apartments,  
Tisk, Ponda –Goa

..... Workmen/Party I

V/s

M/s. GKB Hi-Tech Lenses Pvt. Ltd.,  
50, Thivim Industrial Estate,  
Karaswada, Mapusa,  
Bardez – Goa

..... Employer/Party II

Workmen/Party I represented by Shri. P. Gaonkar.

Employer/Party II represented by Learned Adv. Shri G. K. Sardesai.

**AWARD**

**(Delivered on this the 17<sup>th</sup> Day of the Month of February of the Year 2025)**

By Order dated 01/01/2014, bearing No. 28/52/2013-Lab/01, the Government of Goa in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947)(hereinafter referred to as the “said Act”), the existing dispute between the Management of M/s GKB Hi-Tech Lenses Private Limited, Thivim and its workmen is referred for adjudication to the Industrial Tribunal of Goa at Panaji Goa, constituted under section 7-A of the said Act. The Schedule of reference pertaining to charter of demands is as under:

**SCHEDULE**

*“(1) Whether the action of the management of M/s GKB Hi-Tech Lenses Private Limited, Thivim Industrial Estate, Karaswada, Mapusa, Bardez – Goa, in terminating the services of its workmen S/Shri Prasad Puranik, Parag Gondhali and Chandrahas Govekar, Supervisors, with effect from 23/08/2013, is legal and justified?”*

*“(2) If not, what relief the workmen are entitled to?”*

2. Upon receipt of the reference, it was registered as IT/01/2014 and registered A/D notices were issued to both the Parties. Pursuant to service of notices, the Party I filed their Statement of Claim at Exhibit 5.



3. In their Statement of Claim Party I stated that all the 3 workmen are working for Party II for several years, however the Party II had not implemented the provisions of any of the labour laws such as Factories Act, Payment of Bonus Act, Payment of Minimum Wages Act, Payment of Provident Fund Act etc. and that they were forced to work as Bonded Labourers without payment of overtime allowance. That the Party I workmen thereafter joined Party I Union Gomantak Mazdoor Sangh and submitted their Charter of Demands on behalf of all the workers on the rolls of the Company in the year, 2010. The said Charter of Demands is pending for adjudication before the Tribunal. The services of these workers are governed by the Certified Standing Orders of the Company. Thereafter, the dispute was raised before the Assistant Labour Commissioner, Mapusa. The Management, however, refused to attend the conciliation proceedings and also refused to have discussion with the Union and their representatives, pursuance to which the workers held a peaceful agitation in front of the Gate of the Factory. The Party II in order to victimize and terrorize the workers illegally terminated all the 3 workers under the reference. It is stated that the Party II had violated Section 33 of the Industrial Disputes Act, 1947 and the termination is illegal, unjustified and without following the rules of natural justice.

4. The Party I in the present reference also filed an application seeking interim relief on behalf of 142 workmen for grant of subsistence allowance in accordance with the provisions of Certified Standing Orders of the Company as well as seeking benefits under the provisions of various labour laws which was objected by the Party II.

5. In the Written Statement filed by the Party II, the Party II disputed the claim of the Party I denying all the contents of the Claim Statement and also denied that the workers under the reference were forced to work as bonded labourers without payment of overtime allowance. Party II also denied that they were paid meagre wages. It is submitted that the Management consistently requested the agitating workmen to resume work. It is specifically denied that in order to victimize and terrorize workers, the Party II illegally terminated 3 workmen and suspended 9 other workmen including the local office bearers of the Union.

6. In the Rejoinder filed by the Party I Union, the Party I denied the defence taken by Party II in their Written Statement and maintained and reiterated the facts stated in their Claim Statement.

7. By Order dated 07/01/2015, this Tribunal passed an Interim Award in the Application seeking interim relief dismissing the said application.

8. Considering the pleading filed by both the Parties, following issues were framed by this Tribunal on 08.07.2015 at Exhibit 21.

### **ISSUES**

1. Whether the Party I proves that the Management on 23/08/2013 illegally terminated their services in order to victimize and terrorize the workers?
2. Whether Party I proves that though they were designated as supervisors, they were actually doing clerical and technical skilled/unskilled work?



3. Whether the Party I proves that since their dismissal they are unemployed and could not succeed in getting any employment?
  4. Whether Party II proves that Party I has raised this dispute inspite of accepting the legal dues arising out of termination in full and final settlement?
  5. Whether the Party II proves that under the circumstances prevailing at the relevant time, it was not possible to conduct an enquiry and the Party I employees were dismissed on account of serious and grave misconducts committed by them?
  6. What Relief? What Order?
9. Pursuance to the framing of the Issues, Party I examined their witness Shri Prasad Puranik and Shri Parag Gondhali. On behalf of Party II, they examined one Shri Neeraj Gupta. As the matter proceeded for further evidence of Party II, there came a proposal for settlement on behalf of both the Parties which was duly considered and after a lot of negotiations and interventions from this Tribunal, the Parties finally agreed for final terms. Accordingly, both the Parties filed an application for Award in terms of Settlement at Exhibit 158 Colly which was accepted by this Tribunal by Order dated 14/02/2025. The terms of Settlement are as follows:

#### **TERMS OF SETTLEMENT**

1. The Management agrees to pay Mr. Prasad P. Puranik, Mr. Parag Gondhali and Mr. Chandrahas Govekar a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) each, in full and final settlement of all their claims.
2. It has been agreed between the Parties that the said amount of Rs.5,00,000/- (Rupees Five Lakhs Only) each, shall be paid by cheques in the manner referred to herein below:

Name	Amount	Cheque dated	Cheque No.	Bank & Branch
Mr. Chandrahas Govekar	5,00,000/-	01.02.2025	029118	ICICI Bank, Panaji
Mr. Parag Gondhali	5,00,000/-	01.03.2025	029119	ICICI Bank, Panaji
Mr. Prasad Puranik	5,00,000/-	01.04.2025	029120	ICICI Bank, Panaji

3. Accordingly, Mr. Prasad P. Puranik, Mr. Prasad Gondhali and Mr. Chandrahas Govekar, agrees not to pursue the dispute raised before the Industrial Tribunal under reference No.IT/01/2014 in the matter of their termination from service or any dispute raised individually or through any Union before any Tribunal, Court, Authority or Forum and treat the same as settled.
4. Further, Mr. Prasad P. Puranik, Mr. Prasad Gondhali and Mr. Chandrahas Govekar, agrees that they ceased to be in service of the Company and further agrees not to raise any industrial dispute in the matter of their termination before any Court/Authority/Forum either individually or through any Union and if any such dispute has been at all raised, the same shall be treated as settled.



5. It is agreed between the Parties that this settlement shall be filed before the Industrial Tribunal in case reference No.IT/01/2014 for an Award in terms of the present settlement.

10. I have gone through the records of the case and the above Memorandum of Settlements which are duly signed by both the Parties and I am convinced that the terms of settlement filed by both the Parties are just and fair and are in the interest of the Workmen/Party I and the Employer/Party II and therefore, the same are accepted.

Accordingly, I pass the following Order:

### **ORDER**

- (i) The reference stands disposed off in view of the terms of settlement filed by both the Parties at Exhibit 158 Colly.
- (ii) *No Order as to Costs.*
- (iii) *Inform the Government accordingly.*

-Sd/-

**(Vijayalaxmi R. Shivolkar)**

Presiding Officer  
Industrial Tribunal &  
Labour Court.

Place:- Panaji - Goa

Dated:- 17/02/2025



### **Department of Personnel**

#### **Notification**

7/1/2023-PER(Part-I)/676

Date: 05-Mar-2025

In exercise of the powers conferred by clause (1) of article 316 of the Constitution of India, read with regulation 3 of the Goa Public Service Commission (Members and Staff) (Conditions of Service) Regulations, 2020, the Governor of Goa is pleased to appoint Dr. Udaysinh Shrikant Raorane as the Chairman of the Goa Public Service Commission.

The tenure of Dr. Udaysinh Shrikant Raorane as the Chairman of the Goa Public Service Commission shall be for a period of six years from the date on which he enters upon his office as Chairman or until he attains the age of sixty two years, whichever is earlier.

By Order and in the name of the Governor of Goa

*Raghuraj A. Faldesai*, Under Secretary (Per-II)



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**Department of Revenue**

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**Order**

30/01/2005-RD-I/6785

Date: 20-Feb-2025

Read: 1. No. 30/01/2005-RD-I/6420 dated 15-Nov-2024.

The Government of Goa is pleased to designate Officer in the Sr Nos.14 and 15 of above mentioned Order of the Collectorate South Goa District as Public Information Officers/Assistant Public Information Officers and the First Appellant Authority as required under Section 5 of Right to Information Act 2005 with immediate effect:-

Sr. No.	Name of the Department/offices/Section	Public Information Officer (PIO) Designation	Assistant Public Information Officer & Designation	First Appellate Authority & (FAA)
14	DRO Section	Head Clerk of MAG Section	DEO /Jr. Steno of DRO section	Dy. Collector (DRO)
15	Judicial Section	Mamlatdar in Collectorate-I	Head Clerk of Judicial section	Dy. Collector South II

*Sandeep S Gawade*, Under Secretary (Rev-II)

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**Department of Transport**

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**Notification**

D.Tpt/LEAD AGENCY/12/2020

Date: 19-Mar-2025

Read: 1. No. D.Tpt/LEAD AGENCY/12/2020/28 dated 19-Mar-2025.

In exercise of the powers conferred by sub-section (3) and (4) of section 215 of the Motor Vehicles Act, 1988 (Central Act No. 59 of 1988) read with section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897), the Government of Goa hereby further amends the Government Notification No. D.Tpt/LEADAGENCY/12/2022/1251, dated 17/05/2022, published in the Official Gazette, series II No. 7, dated 19/05/2022 (herein after referred to as the “principal Notification”), as follows namely:-

In the principal Notification, against clause II, namely, the District Road Safety Committee (South),

(i) for the existing entry against serial number (xiii), the following entry shall be substituted, namely:-

“(xiii) The Block Development Officer Salcete-I. ... Member.”;

(ii) after the entry at serial number (xiii), the following entries shall be inserted, namely:-

“(xiv) The Deputy Director of Education, ... Member.  
Central Zone.

(xv) The Assistant Director of Tourism (Planning), ... Member.  
Department of Tourism.

(xvi) The Assistant Director,  
Government Veterinary Hospital,  
Sonsodo, Margao,



Department of Animal Husbandry and  
Veterinary Services.

... Member.

(xvii) Superintending Engineer,  
C.O.-IV (Roads), (SH), (MDR)  
and (RR/VV), Public Works Department,  
Fatorda, South Goa.

... Member Secretary.

This Notification shall come into force on the date of its publication in the Official Gazette.

By Order and in the name of the Governor of Goa

*P. Pravimal Abhishek*, I.A.S., Director of Transport/Ex. Officio Addl. Secretary (Transport)

**NOTE:-**The principal Notification was published in the Official Gazette, series II No.7, dated 19/05/2022 and subsequently amended vide the following notifications, namely:-

- (1) Notification No. D.Tpt/Lead Agency/12/2020/77 dated 01/08/2024, published in the Official Gazette, series II No.19, dated 08/08/2024.
- (2) Notification No. D.Tpt/Lead Agency/12/2020/132 dated 25/11/2024, published in the Official Gazette, series II No.35, dated 28/11/2024.